

AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the East Altamont Energy) 01-AFC-4
Center)

6400 11TH STREET

MONDAY, FEBRUARY 24, 2003

Reported By:

Contract No. 170-01-001

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Mike Boyd, CARE

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1 P R O C E E D I N G S

2 CHAIRMAN KEESE: Well, we're here to
3 discuss the Presiding Member's Proposed Decision
4 on the East Altamont Energy Center.

5 All the faces seem to be familiar, but
6 why don't we have the parties introduce
7 themselves. Applicant, please.

8 MR. WHEATLAND: Good morning. I'm Gregg
9 Wheatland, I'm the attorney for the Applicant.

10 MR. DeYOUNG: I'm Steve DeYoung,
11 Environmental Manager for Calpine.

12 MS. TORRE: I'm Alicia Torre, Project
13 Development Manager for Calpine.

14 CHAIRMAN KEESE: Thank you. Staff.

15 MS. DeCARLO: Lisa DeCarlo, Staff
16 Counsel. To my left is Cheri Davis, Staff Project
17 Manager. We also have in the audience staff,
18 various staff members, Al McCuen, for Transmission
19 System Engineering; Lorraine White and John
20 Kessler for Soil and Water Resources; and Matt
21 Layton and Tuan Ngo, for Air Quality.

22 CHAIRMAN KEESE: Thank you.
23 Intervenors.

24 MR. SARVEY: Bob Sarvey, representing my
25 family.

1 CHAIRMAN KEESE: Do we have any
2 governmental entities? Please, at the microphone,
3 for the record.

4 MR. POHL: My name is Greg Pohl, I'm
5 with the Modesto Irrigation District.

6 MR. THOMAS: Bruce Thomas, Western Area
7 Power.

8 MR. FREGOSO: Larry Fregoso, City of
9 Tracy Fire.

10 MR. SENSIBAUGH: Paul Sensibaugh, with
11 the Mountain House Community Services District.

12 CHAIRMAN KEESE: Thank you.

13 All right. We're just taking
14 acknowledgments of governmental entities. Would
15 BBID care to get on the record? Sorry. At the
16 microphone, for the record, please.

17 MR. GILMORE: Rick Gilmore, General
18 Manager of Byron Bethany Irrigation District.
19 Also with me is our District Engineer, Gary Ness,
20 from CH2MHill

21 MR. PINHEY: Nick Pinhey, with the City
22 of Tracy Public Works Department.

23 CHAIRMAN KEESE: Thank you. Do we have
24 somebody on the telephone with us? I guess not.

25 I'd like to acknowledge the parties'

1 filings. You're all right. You're not all right
2 on everything you said, so let me try to set, to
3 have a brief discussion here so that we can focus
4 our comments more narrowly than what we would have
5 to if we went through all the changes that have to
6 be made in this document.

7 My hearing advisor tells me that we
8 should, that I should probably give you a schedule
9 today. What we're going to do after I've made a
10 brief statement is we're going to have the
11 Applicant comment, Staff comment, Intervenor's
12 comment, agencies' comment, and at the end of our
13 process, after having heard those and perhaps an
14 ongoing discussion, we will have public comment.
15 It would be my hope that we would be out of here
16 by 1:00 o'clock. That's a hope, not a limit. We
17 are going to stay here until we've gotten through
18 whatever we have to get through today.

19 FROM THE AUDIENCE: Excuse me, sir.
20 Could you introduce yourselves from the table?

21 CHAIRMAN KEESE: Okay. I'm Bill Keese.
22 I'm the Chair of the Committee that's handling
23 this. Commissioner Pernell is not able to join us
24 today, he's on vacation.

25 To my right is Scott Tomashefsky, my

1 advisor. To the fast left is Al Garcia,
2 Commissioner Pernell's advisor. And Major
3 Williams is our Hearing Officer, who will be
4 handling this. Thank you.

5 Let me deal with Air first. It's our
6 inclination to feel that the Bay Area Air Quality
7 Management District has provided full mitigation
8 for this project, as far as LORS are concerned.
9 We are inclined to believe that there are
10 significant local impacts under CEQA, which are
11 not mitigated by the Bay Area's decision.

12 Let me make it clear that we're going to
13 set aside the issue of ammonia slip. The Bay Area
14 has a standard, San Joaquin has a standard, we
15 will defer, it is our intention to defer that
16 issue since they're identical.

17 As a result of the CEQA requirements,
18 additional mitigation is required. We agree with
19 staff that we need mitigation targets as a
20 condition of certification, again, as required
21 under CEQA. Payment of a set sum of money does
22 not seem to meet those targets.

23 The AQMA may meet those targets, but we
24 would like comments from the parties on
25 integrating those documents. We would like

1 comments particularly looking at staff's
2 conditions in this area.

3 On the issue of Water, the Committee
4 believes that BBID has a sufficient supply of
5 water to meet the EAEC's project needs, as well as
6 the needs of its existing and future customers,
7 without creating a potential significant effect on
8 the environment. We would note that TriMark, the
9 developer of Mountain House, is committed to full
10 utilization of recycled water and has incentives
11 in that regard.

12 Mountain House, while not committed at
13 this time, has great incentive to see utilization
14 of recycled water, and BBID has committed to use
15 all recycled water and has an arrangement with
16 Applicant. Applicant has agreed to take all
17 recycled water and to make their plant amenable to
18 the use of recycled water.

19 We agree with staff that use of recycled
20 water to meet all needs, augmented by raw water
21 from BBID, is the most favorable outcome.

22 That said, we are willing to take, we
23 are willing to be shot at on any of those
24 statements.

25 One minute, please.

1 (Off the record discussion.)

2 CHAIRMAN KEESE: Everybody up here has
3 all their siting cases they're working on
4 contemporaneously with this one, so we
5 occasionally have difficulty getting together.

6 We would request comments on the
7 requirements that might be placed on parties with
8 respect to the delivery of recycled water to the
9 power plant site.

10 With that, the Applicant, please.

11 MR. WHEATLAND: Well, thank you,
12 Chairman Keese.

13 At the outset, I'd like to note that the
14 Applicant is very pleased that the Proposed
15 Decision has recommended approval of the
16 Application for Certification for the East
17 Altamont Project. We've gone through a very
18 exhaustive and exhausting 18 month review process,
19 and we appreciate the careful consideration that
20 the Committee has given to all of these very
21 difficult issues in the last 18 months.

22 The Proposed Decision contains, if we
23 count correctly, 221 proposed Conditions of
24 Certification. And the Applicant is in
25 substantial agreement with 219 of those 221

1 conditions. There are only two in which we
2 believe there are substantive differences
3 remaining as between the Applicant and what has
4 been proposed in the PMPD.

5 There are, in addition, a few minor
6 corrections and clarifications, but those are
7 common to any decision of this complexity and
8 magnitude, and those are identified in our
9 comments to the Committee on the Proposed
10 Decision.

11 The two areas that you have outlined are
12 Air and Water, and we would like to make a few
13 comments on each.

14 For the Air area, I'd like Gary to
15 introduce himself and to address the Air issues.

16 CHAIRMAN KEESE: Thank you. May I make
17 one additional statement with regard to Air. Let
18 me give you background, as we see it, so that you
19 can assist us with your expertise.

20 This is a unique project as far as we
21 can determine in the licensing process by the
22 Energy Commission. We have a proposed power plant
23 that resides in an air district, and also resides
24 in a different air basin. That, it gives the
25 Committee, it concerns the Committee that we site,

1 that we work on this project based on the rules of
2 one air district and how we integrate the
3 requirements of the other air basin.

4 I'll just leave it right there and we
5 would appreciate guidance on this.

6 MR. RUBENSTEIN: Thank you, Chairman
7 Keese. For the record, my name is Gary
8 Rubenstein. I'm with the firm of Sierra Research,
9 and we're air quality consultants for the project.

10 In general, we support the proposed
11 conclusions and findings with respect to air
12 quality. We have made several specific comments
13 with suggested changes in the written comments
14 that we filed last week. We very much appreciate
15 the Committee's diligent attention to these
16 important and complex issues, particularly because
17 of the unique aspects of this project, and because
18 of the substantially conflicting opinions that
19 you've received in the course of this proceeding.

20 I think it's important for all of us to
21 remember that this project, as Commissioner Keese
22 has indicated, is unique because of its location.
23 The term "air basin" is actually a term of art,
24 and the project is within the Bay Area District
25 air basin. I think the point that you were making

1 was that physically it is located within the San
2 Joaquin Valley, where its air emissions will have
3 more of an impact, perhaps, on the San Joaquin and
4 Sacramento air basins and air districts than would
5 most other projects located within the
6 jurisdiction of the Bay Area District.

7 But it's also important to remember, and
8 it's precisely because of this project's unique
9 location, that this project was reviewed in detail
10 not by one, but by two different air pollution
11 control districts; both by the Bay Area district
12 and by the San Joaquin district. And while the
13 San Joaquin district's review of the project may
14 not have been to the satisfaction of the
15 Commission staff, nonetheless you saw a very high
16 level of involvement by both agencies in your
17 proceeding, which I think is appropriate, given
18 the unique characteristics of this project.

19 There are a number of minor changes,
20 some of which were reflected in our written
21 comments and some of which will be reflected in
22 supplemental comments that we'll be filing later
23 this week, that I will not take the Committee's
24 time with this morning.

25 There are, however, two substantive

1 issues, one of which I'll touch on briefly, and
2 one of which I'll touch on at greater length.

3 The first relates to a proposed
4 condition, and it's in Condition AQSE3, Paragraph
5 Q, that requires the use of diesel particulate
6 soot filters on construction equipment.

7 The wording in this language in this
8 paragraph, and this is addressed in the written
9 comments we filed, is subtly different from the
10 versions of this condition that you have seen over
11 the last several years. Unfortunately, that
12 subtle change raises a potential legal issue that,
13 frankly, I was not aware of until a week and a
14 half ago. And I became aware of it when I
15 contacted the California Air Resources Board to
16 see whether their position with regard to this
17 aspect of construction mitigation had changed.

18 And I was informed at that time that
19 there is an issue related to a waiver of federal
20 preemption when it comes to government agencies
21 mandating the use of emission controls on
22 certified construction equipment. And that's
23 exactly what this condition would do.

24 I think we and the staff probably agree
25 that the current language, if interpreted as we

1 think the staff will interpret it, which is that
2 they can't require us to do something that is
3 illegal, probably could stand. However, I think
4 the Committee should consider whether you want to
5 go back to the previous version of this language,
6 which you can find in almost any Commission
7 decision of the last two years, rather than
8 potentially raising a legal issue as to whether
9 the Commission is inappropriately mandating the
10 retrofit of soot filters for equipment that
11 already meet federal standards.

12 Having gotten that out of the way, let
13 me turn to the most substantive issue that we
14 have, which is the need for additional mitigation.

15 Clearly, we support the Committee's
16 conclusions in this area. We believe that the
17 combination of the emission reduction credits
18 provided to the Bay Area district and
19 implementation of the air quality mitigation
20 agreement we have implemented with the, or we have
21 signed, rather, with the San Joaquin district,
22 fully mitigate the project's impacts in both air
23 basins under worst case conditions.

24 I think it's important to keep in mind
25 how this issue arose, to keep it into context.

1 The Applicant initially proposed mitigation for
2 PM10 in particular, which was the Commission
3 staff's initial concern, by paving roads at a
4 location that was relatively close to the project
5 site. Very early on in the process, the CEC staff
6 objected to this form of mitigation for this
7 project, even though the Commission has approved
8 paving roads in many other cases. You can look at
9 the Commission decisions for both the High Desert
10 project and Three Mountain Power, in particular.

11 So what we're proposing was not new.
12 But in this case, the staff objected to it, and in
13 order to address the staff's concerns, again,
14 early on in the process, we made several changes
15 to the project configuration, including reducing
16 PM10 emissions and eliminating road paving as a
17 mitigation measure, replacing it with traditional
18 emission reduction credits.

19 Of necessity, because there are no
20 traditional emission reduction credits very close
21 to the project site, because of its unique
22 location, those emission reductions came from
23 somewhat further away.

24 At about the same time, and again, this
25 is still very early in the process, the San

1 Joaquin Air District expressed, in writing, their
2 concerns to the Commission about the project's
3 impacts within the San Joaquin Valley Air Basin.
4 Both the CEC staff and the Committee very clearly
5 urged the Applicant to work with the San Joaquin
6 Air District to make sure that those concerns were
7 addressed. And we spent a great deal of time and
8 effort working with the San Joaquin District, and
9 we're pleased that we were able to, in fact, reach
10 an agreement with them on an extensive mitigation
11 program that we believe will result in real air
12 quality improvements in the northern part of the
13 San Joaquin Valley.

14 After reaching this agreement, the staff
15 objected again, indicating that they believed that
16 the agreement was inadequate. To a certain
17 extent, from our perspective, the staff's position
18 has been somewhat of a moving target in this
19 proceeding. And as a result, we have tried to
20 focus on the Committee's guidance, which has been
21 quite consistent throughout.

22 We believe, given the conflicting
23 opinions that are presented to you, that it's
24 important for the Committee to clearly indicate in
25 their decision its reliance not only on the

1 regulatory authority, but also on the technical
2 expertise of the two agencies with air quality
3 experience, who have participated in this
4 proceeding, and that's the Bay Area District and
5 the San Joaquin Air District.

6 To the extent that there's a
7 disagreement between the CEC staff and the air
8 agencies regarding issues of LORS or issues
9 regarding the significance of air quality impacts,
10 or issues regarding the adequacy of mitigation, we
11 believe that the Committee can and should give
12 deference to the opinions of those agencies.

13 Now, for example, the Bay Area district
14 rendered no opinions on the issue of significance;
15 they did a strict LORS review. And consequently,
16 there is no opinion for the Committee to rely on
17 in that regard.

18 However, the San Joaquin district's
19 review clearly went beyond a LORS review. They
20 participated in this proceeding at their own
21 initiative, expressed concerns about impacts that
22 they believed would not be mitigated through a
23 traditional LORS review, and used their expertise
24 to determine the extent of the additional
25 mitigation that would be required. And I think it

1 is appropriate for the Committee to rely upon that
2 district's expertise in making its decision about
3 the quantity of mitigation that's required and the
4 appropriate mechanism for carrying that out.

5 CHAIRMAN KEESE: So, in answer to my
6 question, if we do find significance you would
7 agree that we cannot accept merely the payment of
8 a sum of money, but we have to have targets.
9 Would you agree with that?

10 MR. RUBENSTEIN: To a certain extent.
11 And I'm going to --

12 CHAIRMAN KEESE: And you, but you're
13 suggesting that San Joaquin may have set the
14 targets for us.

15 MR. RUBENSTEIN: I believe they have,
16 yes.

17 CHAIRMAN KEESE: Okay. Thank you.

18 MR. RUBENSTEIN: The staff, the CEC
19 staff in this proceeding has asserted that a great
20 deal more detail is required in order to have an
21 acceptable mitigation package to satisfy the
22 requirements of CEQA. I would respectfully
23 suggest, however, that the Committee take a look
24 in particular at two decisions in which the
25 staff's position was not quite the same.

1 The first was the decision on the Tracy
2 Peaker project, which has been cited very often in
3 this case. There is an additional mitigation
4 program that's required for the Tracy Peaker
5 project which sets none of the conditions, none of
6 the targets that have been discussed in this
7 proceeding.

8 Now, to be fair, the condition requiring
9 that mitigation program in the Tracy decision very
10 clearly states that it is not required to deal
11 with a significant impact under CEQA. And so to
12 that extent, it's distinguishable from this case.

13 The case that's probably most on point,
14 however, is the Commission's Otay Mesa decision,
15 which as well contains little more than a
16 statement that payments must be made of a certain
17 dollar amount to mitigate a project's PM10
18 impacts. What's particularly interesting about
19 the Otay Mesa decision is that in that case, the
20 project did not provide any PM10 offsets
21 whatsoever. They were not required to under the
22 LORS requirements in the San Diego Air District.

23 So with respect to PM10, this mitigation
24 condition was the only mitigation that was
25 provided, and it was simply a statement of a

1 dollar amount and general references to certain
2 types of mitigation programs that should be
3 implemented.

4 What we have proposed in the condition
5 that we had recommended in our Air Quality
6 testimony, and which in the PMPD the Committee
7 had, at least at that point, declined to consider,
8 was something that was far more detailed. It
9 specifically referenced the air quality mitigation
10 agreement. The air quality mitigation agreement
11 and the condition also referenced the air quality
12 mitigation plan, which delineates a specific menu
13 of options to be considered, estimates the
14 emission reductions that would be achieved by
15 those mitigation measures, and in all respects, I
16 think, contains the level of detail that the staff
17 has required.

18 The staff's proposed conditions, on the
19 other hand, stayed with their original
20 calculations of the mitigation that's required,
21 their original structure for the mitigation
22 program, and, incidentally, indicates oh, by the
23 way, you can take credit for whatever reductions
24 you get under something like the air quality
25 mitigation agreement.

1 We believe that the staff's conditions
2 go too far to the other extreme. They're simply
3 too open-ended. And that if the Committee
4 believes that there needs to be a stronger tie
5 between the air quality mitigation agreement and
6 the Commission's decision -- and frankly, that's a
7 position that I would concur in -- if there needs
8 to be a stronger tie, we believe that the
9 conditions that we have proposed would, in fact,
10 provide that connection for you.

11 CHAIRMAN KEESE: And that is that you
12 supplied earlier --

13 MR. RUBENSTEIN: That's precisely the
14 language that we provided in our testimony.
15 That's correct. Our pre-filed testimony.

16 One of the things that I think is
17 important to keep in mind in reviewing this issue,
18 in particular, in the context of CEQA. I believe
19 that the need for additional mitigation for this
20 project is fundamentally an issue of cumulative
21 impacts. I don't believe that there is any
22 evidence in the record to support the conclusion
23 that this project by itself creates a significant
24 air quality impact. Rather, this project
25 contributes to some rather severe air quality

1 problems that we have throughout much of the
2 state, but in particular in the San Joaquin
3 Valley.

4 And I think it's appropriate for the
5 Commission to devote this kind of time to make
6 sure that that cumulative impact is addressed.
7 But it's also important to remember that CEQA
8 establishes different standards for the assessment
9 and mitigation of cumulative impacts than it does
10 for direct project specific impacts. And in
11 particular, it's quite appropriate for an agency
12 to rely on existing regulatory programs
13 implemented by other agencies when reviewing
14 mitigation for cumulative impacts, whereas that
15 might not be appropriate in the case of a direct
16 project impact that's within the direct
17 jurisdiction of the lead agency.

18 I don't say that to suggest that there
19 shouldn't be any tie at all, but merely to suggest
20 that this is not the same as a direct impact
21 within the Commission's -- direct impact in a
22 discipline that's within the Commission's direct
23 jurisdiction, but rather, you're looking for
24 mitigation to deal with a cumulative impact, and
25 consequently, the air quality mitigation agreement

1 with an appropriate tie-in to the Commission's
2 decision I think would fully address CEQA's
3 requirements in that area.

4 CHAIRMAN KEESE: Thank you.

5 Mr. Wheatland, we're going to defer to
6 Applicant as to how they'd like to do this. If
7 you'd like to deal with the air issue and then
8 come back later to the water issue or other
9 issues, that would be fine. If you want to do all
10 your issues at the outset, that's fine. What --

11 MR. WHEATLAND: Our preference would be
12 to address the air issue now. I think it would
13 help to have it in the context of Mr. Rubenstein's
14 comments to have that discussion take place. So I
15 can defer --

16 CHAIRMAN KEESE: Okay. Do you have any
17 other comments on this area?

18 MR. RUBENSTEIN: No, that completed my
19 comments.

20 CHAIRMAN KEESE: Staff.

21 MS. DeCARLO: Thank you.

22 We agree with the Committee's statement
23 that further mitigation is necessary to address
24 the project's potential impacts to air quality in
25 the San Joaquin Valley.

1 To that extent, staff has proposed a
2 Condition of Certification in our comments on the
3 PMPD that will ensure the project's impacts are
4 adequately mitigated. This condition is more
5 flexible than the one proposed in the AFC. The
6 emission reduction requirements identified in this
7 condition, 175 tons per year NOx or VOC and 50
8 tons PM10 are clearly supported by the record.

9 With regards to mitigation, CEQA is
10 clear that where mitigation has been identified as
11 necessary, there must be monitoring and reporting
12 requirements contained in a decision to ensure
13 that such mitigation is adequately carried out.

14 In regards to the specific comments made
15 by Mr. Rubenstein, I now refer to Mr. Layton, who
16 will discuss staff's response.

17 MR. LAYTON: Good morning.

18 I guess the first issue that Gary
19 raised, Mr. Rubenstein raised, was the issue of
20 the preemption. We have not heard from CARB on
21 this particular issue. We have frequent dialogues
22 with CARB. They initially, when we proposed soot
23 filters or these catalyzed diesel particulate
24 filters on construction equipment, CARB was very
25 concerned because there are some anti-tampering

1 laws.

2 This preemption is a newer issue, and to
3 be honest, I'm not sure how to address it. The
4 condition we have written right now allows for, or
5 requires soot filters unless there's some reason
6 why soot filters shouldn't be put on there. If it
7 would violate a tampering law that CARB has in
8 place, or raise this preemption issue, then
9 obviously it would not be appropriate to have a
10 soot filter on that particular item.

11 We think the condition as written allows
12 this latitude. So we don't know how to address
13 the issue that Mr. Rubenstein has raised, and --

14 CHAIRMAN KEESE: Is the Applicant
15 content with the oral statement that obviously if
16 this violates the CARB rule, it wouldn't be done?

17 MR. RUBENSTEIN: I think if this was the
18 only issue we were dealing with in this
19 proceeding, we would probably acquiesce. But my
20 concern --

21 CHAIRMAN KEESE: Okay. Then, that's
22 fine. Would staff pursue this issue and get us
23 something on this? Understanding this is a --

24 MS. DeCARLO: A written response?

25 CHAIRMAN KEESE: Yes.

1 MS. DeCARLO: Yes.

2 CHAIRMAN KEESE: This is a late --

3 MR. LAYTON: We'd be happy to pursue
4 this, yes.

5 CHAIRMAN KEESE: Thank you. ASAP,
6 obviously.

7 MR. LAYTON: I'll make a note of that.

8 On the road paving, staff has accepted
9 road paving in some projects. But again, it's
10 very site specific. In this particular instance,
11 we thought the estimates of effectiveness of the
12 PM10 reductions were overestimated by the
13 Applicant, so we did raise a lot of concerns about
14 that. Also, some of the PM10 reductions were from
15 Petaluma, which is not necessarily adjacent to the
16 site. Those are road paving in Petaluma.

17 And, again, CARB has come out and said
18 that road paving is not appropriate for
19 mitigating, say, PM10 impacts from a power plant,
20 which predominantly is PM25. So that in mind, we
21 did suggest to the Applicant that road paving
22 might not be the appropriate way to go to mitigate
23 this particular project.

24 That said, we did not suggest to the
25 Applicant that they had to go into Bay Area to get

1 those PM10 reductions. We still think that the
2 impacts are in San Joaquin, the San Joaquin
3 Valley, and therefore perhaps PM10 reductions in
4 the adjacent area in San Joaquin might be more
5 appropriate than going all the way to Redwood City
6 and things like that.

7 CHAIRMAN KEESE: Would they have met the
8 Bay Area's requirements?

9 MR. LAYTON: Well, that would be a very
10 interesting question.

11 CHAIRMAN KEESE: Because you do, the
12 Committee is concerned about this Catch-22 here,
13 that if you do them in San Joaquin you're not
14 going to get any credit, if you do them in the Bay
15 Area we're going to say that you benefit other
16 people, but not San Joaquin.

17 MR. LAYTON: The PM10 requirements are
18 Bay Area's requirements. Therefore, Bay Area
19 would want to see Bay Area credits, yes.

20 CHAIRMAN KEESE: Correct. And if, you
21 know, just, I think we're beyond this, but the
22 point is, by that requirement you wind up with the
23 Applicant benefitting the Bay Area, but you're
24 saying not mitigating the plant. I think --

25 MR. LAYTON: The problem is, is that the

1 location of the power plant is very problematic.
2 We agree, we agree it's a very complex issue. And
3 then, again, the Bay Area and San Joaquin have
4 reviewed this project, but we still believe that
5 San Joaquin's review has not risen to a level of
6 great detail. I don't think San Joaquin went much
7 beyond LORS. If they did -- well, they overlooked
8 some simple LORS.

9 There's been some assertions in the
10 record that San Joaquin would accept the Bay Area
11 credits for a power plant located in San Joaquin.
12 Again, the air mitigation agreement does not say
13 that. It just says that given this accounting,
14 this is how much additional mitigation we would
15 like. It doesn't say anything about the Bay Area
16 credits satisfying San Joaquin's rules.

17 The PMPD made note of that, that the
18 ERCs from Bay Area would not satisfy the rules
19 because they would violate the Health and Safety
20 Code for transferring credits from a clean air
21 district to allow an emission increase in a dirty
22 air district.

23 So, again, we don't think that San
24 Joaquin's effort has risen to a level that really
25 is detailed. Obviously, they are an air quality

1 agency. They are experts in their field. But in
2 this particular instance, I don't think they have
3 provided enough detail for the Committee to rely
4 on.

5 Regarding the Otay Mesa project, we have
6 required money for mitigation, but, again, site
7 specific. San Diego is relatively clean. They
8 are almost attainment for the state PM10. They
9 just reached attainment for the federal ozone.
10 They are going in the right direction. San
11 Joaquin, again, where the project is located, the
12 San Joaquin Valley, where the emissions occur,
13 where the impacts occur, we believe is not going
14 in the right direction. We are concerned that
15 this project, not by itself, but in contribution
16 with all, well, with all the other projects and
17 growth, this project will contribute to
18 significant air quality problems in San Joaquin.

19 Therefore --

20 CHAIRMAN KEESE: So you are, you are
21 concurring with the Applicant's statement that
22 it's a cumulative impact that we're concerned
23 about, not the direct project?

24 MR. LAYTON: Correct. But the project
25 then has to also mitigate its contribution to that

1 cumulative, and we don't think the Bay Area
2 credits rise to that level.

3 So I, as Mr. Rubenstein pointed out, the
4 Tracy Peaker Project, the requirements were not
5 required by us, this additional mitigation that he
6 refers to. It was a side agreement that was
7 negotiated by the Applicant with the City of
8 Tracy. On Otay Mesa, again, different air
9 quality, different setting. We don't think it's
10 necessarily an appropriate comparison to this
11 project.

12 We believe our condition, which
13 specifies tons that we would like to see in the
14 San Joaquin Valley to mitigate the impacts, the
15 local and regional impacts that the PMPD refers
16 to, is the most appropriate condition. We
17 disagree that the AQMA has more detail than our
18 condition. The AQMA, the mitigation agreement,
19 seems to have -- I mean, just has dollars. We're
20 looking for some tons of reduction, some
21 mitigation that actually is in the air basin where
22 the impacts occur.

23 CHAIRMAN KEESE: Have you done any
24 analysis of what you believe the million dollars
25 would achieve, versus your targets? With the

1 understanding that -- the San Joaquin District, I
2 believe, had a list of ten proposals in which area
3 they might --

4 MR. LAYTON: The million dollars we
5 believe would achieve about 60 tons of NOx and
6 about three or four tons of PM10. Also part of
7 the emphasis in the AQMA is that there is this
8 leverage that supports the program, an ongoing
9 program. We understand that. It's good to have
10 some seed money for these emission reduction
11 programs that San Joaquin has in place. But that
12 doesn't necessarily guarantee that the seed money
13 is going to lead to significant other reductions.
14 All we're able to count on is about 60 tons of
15 NOx, and maybe three or four tons of PM10 from the
16 million dollars, is what we believe.

17 But again, there's no requirement in the
18 PMPD right now that actually specifies that tons,
19 requires reporting of those tons, and then allows
20 us to move forward.

21 CHAIRMAN KEESE: As I've indicated, the
22 Committee is inclined to feel that we need
23 targets.

24 MR. LAYTON: In our condition we would
25 like to take credit for the AQMA. We do not

1 believe the AQMA goes far enough to achieve those
2 tons, because we differ significantly on the
3 benefit of the Bay Area credits for the, the
4 regions where the impacts occur, and therefore
5 we'd like to take credit for the AQMA, but then we
6 want to go further. So I don't think, as Mr.
7 Rubenstein suggested, us trying to take credit for
8 reductions that occur in the AQMA as open-ended
9 and flexible, I think is actually a desirable
10 thing. I mean, they spend the money, they should
11 get credit for those reductions.

12 CHAIRMAN KEESE: Thank you.

13 MR. LAYTON: Would you like us to
14 comment on some of the other items that they have
15 addressed -- they've made some comments on some of
16 the findings that we disagree with.

17 CHAIRMAN KEESE: I'd like you to discuss
18 everything on air.

19 HEARING OFFICER WILLIAMS: Is there
20 anyone here from the San Joaquin Air District?

21 MR. GARCIA: Mr. Chairman, before we go
22 on --

23 CHAIRMAN KEESE: Mr. Garcia.

24 MR. GARCIA: I'd like to ask a couple of
25 questions of staff.

1 CHAIRMAN KEESE: You've got a microphone
2 there.

3 MR. GARCIA: How's that? Okay. I
4 believe Ms. DeCarlo put this together with the
5 assistance of staff. And there's two points that
6 I'd like you to address.

7 And one of them is on page 8, where
8 you're citing Kings County Farm versus Hanford,
9 and you're making the assertion that case law
10 indicates their payment of money is not sufficient
11 to demonstrate mitigation.

12 The other is, I believe, in the same
13 document. It's asserted that the benefits that
14 accrue from the AQMA need to be quantified and, or
15 seen by the staff. Yet here, you're arguing, it
16 seems like, the opposite argument.

17 MS. DeCARLO: I should probably address
18 the reference to the case law.

19 Our main argument is that the mere
20 designation of money without a finding, without
21 any assurance that any specific mitigation will be
22 obtained from that money, is in contradiction with
23 the requirements of CEQA. CEQA requires, among
24 other things, that you identify what needs to be
25 mitigated, and then you follow that up with

1 assurance that it will be mitigated. We do that
2 here through Conditions of Certification.

3 Our concern with the AQMA as it stands
4 now is that it just identifies a dollar amount.

5 MR. GARCIA: How is that consistent with
6 the Otay Mesa decision?

7 MS. DeCARLO: I'll let Matt address
8 that.

9 MR. GARCIA: Because it seems
10 inconsistent to me.

11 MR. LAYTON: Well, again, the, one of
12 the differences we have, besides the study in the
13 air quality, there were specific programs in place
14 which would achieve the reductions locally, and we
15 thought a higher degree of success. Here, San
16 Joaquin is a very large air basin, and doesn't
17 have a track record of having success in achieving
18 air quality improvements. There have been some
19 improvements, but obviously they are considering
20 going from a serious or a severe to extreme, to
21 allow themselves more time to reach attainment.

22 San Diego, on the other hand, has just
23 attained the ozone standard, and will probably be
24 attainment for PM2.5 in their PM10 standard. From
25 a CEQA perspective, I guess, it's very site

1 specific, very --

2 MR. GARCIA: Let me kind of poke at what
3 my area of discomfort is, and that staff attorney
4 indicated that it's very clear that the
5 Commission's responsibility is to make sure that
6 any mitigation is, in fact, done and quantified.
7 And it sounds like, on the one hand, you're saying
8 that the benefits that would accrue pursuant to
9 the AQMA are going to be enough to -- enough,
10 maybe, to offset the impacts of the plant.

11 Yet, on the other hand, the Otay Mesa
12 decision, and I have not read that, but supposedly
13 it, the Otay Mesa decision was just the handing
14 over of some money and no specific programs were
15 identified or benefits measured.

16 MS. DeCARLO: I apologize. I haven't
17 read the Otay Mesa decision in quite a while, so
18 I'm unfamiliar with the specifics of the findings
19 in that decision. And I could, if you would like,
20 provide a written comparison of the two, what
21 staff is recommending in this proceeding and what
22 the Commission agreed to in Otay Mesa.

23 MR. GARCIA: Well, I think one of the
24 areas of discomfort is, on the one hand, you know,
25 you make an assertion that we have the obligation

1 to make sure that the benefits are quantified and
2 verifiable. And on the other hand, we have
3 essentially case law from the decision that does
4 something different. And I'm kind of puzzled and
5 a little bit troubled by the difference between
6 the two approaches.

7 And I, you know, I'd like to see, and my
8 Commissioner would, and I'm sure Chairman Keese
9 would like to get some guidance regarding this.

10 MS. DeCARLO: And all I can say is that
11 aside from the decision in Otay Mesa, which I
12 assume to be a valid decision, I don't question
13 the determinations in that case, we need to ensure
14 that we do proceed according to case law,
15 according to CEQA requirements in this instance,
16 and that does require the identification of
17 specific mitigation requirements and the assurance
18 that those mitigation requirements are achieved.

19 MR. GARCIA: So let me follow up on that
20 for a second. So you would not disagree that if
21 the committee were to include the AQMA benefits as
22 a condition of certification, that there would be
23 a requirement that these benefits be quantified
24 and be offset against the additional required
25 mitigation that you've also identified, the 75 and

1 the 50.

2 MS. DeCARLO: If I understand your
3 question correctly, we do agree that whatever
4 offsets are achieved by, pursuant to the AQMA, the
5 money, the funding to San Joaquin Valley Air
6 Pollution Control District, we do agree that those
7 could certainly fall within and be accounted for
8 in the offsets requirements that we have
9 identified.

10 MR. GARCIA: Okay. But you agree that
11 there needs to be some kind of a condition to
12 quantify and certify that these benefits have, in
13 fact, been achieved?

14 MS. DeCARLO: Definitely. And I believe
15 that San Joaquin Valley Air Pollution Control
16 District has testified that they intend to provide
17 the Applicant with, I don't know, quarterly or
18 annual reports as to what offsets or mitigation
19 they were able to achieve with the money. And it
20 would be a simple matter, I believe, for the
21 Applicant to then provide us with that information
22 so that we can keep track of the offsets that have
23 been obtained and kind of compare that with our
24 requirements.

25 MR. GARCIA: Okay. Thank you. That's

1 all I have for now.

2 CHAIRMAN KEESE: Would you give us your
3 idea of how we would tie in this voluntary
4 agreement, quote, voluntary agreement, between the
5 Applicant and San Joaquin, and your idea of
6 measurable standards that can be monitored and
7 validated?

8 MS. DeCARLO: Well, I do believe that
9 our condition that we proposed in the comments on
10 the PMPD does enable the Commission, through
11 compliance, to keep track of and identify the
12 offsets that have been obtained through the use of
13 the \$1 million from San Joaquin. And as I
14 mentioned earlier, San Joaquin has intimated that
15 they are going to be providing the tracking
16 mechanism, they're going to be keeping the money
17 obtained from the Applicant separate, in a
18 separate account, and they will be tracking how
19 much offsets mitigation, and what not, are
20 obtained with that funding.

21 And so it should be a simple matter for
22 the Applicant to then pass that along to us. And
23 then we can deduct that amount from our overall
24 requirement, and then determine, at some point,
25 the Applicant can determine where they will obtain

1 the difference.

2 CHAIRMAN KEESE: Thank you. Is that it?

3 MR. LAYTON: We have some other comments
4 on some of the --

5 CHAIRMAN KEESE: Sure.

6 MR. LAYTON: -- comments that they made
7 on your findings.

8 Going to their discussion about minor
9 corrections, starting on page 41. On page 43, the
10 Applicant discusses the word "significant" for
11 Finding 6. Do you still believe the word
12 "significant" is appropriate? The analyzed or the
13 modeled PM10 impacts from construction are 30
14 micrograms per cubic meter, the standard is 50.
15 We think that the project by itself causing 30 to
16 a background that's above 50, is a significant
17 impact. And so we are concerned that the
18 Applicant is suggesting that word is not
19 appropriate.

20 We believe that word is appropriate
21 there. We think it is an appropriate finding by
22 the Committee.

23 MS. DeCARLO: That was page 42, for
24 clarification.

25 CHAIRMAN KEESE: Yeah.

1 MR. LAYTON: On page 43, the Applicant
2 is discussing Finding 15. We think the finding is
3 still appropriate. We believe that the evidence
4 in the record shows that 5 ppm ammonia slip is
5 technically feasible. We think the recommendation
6 by CARB that 5 ppm, in combination with 2.5, is an
7 appropriate finding. We do understand that this
8 project is at 2 ppm NOx, rather than 2.5 ppm.
9 However, we think this is an important finding and
10 should be left in, rather than deleted in its
11 entirety.

12 We think, on page 44, Finding 21, the
13 Applicant has suggested that the discussion about
14 the three regions in San Joaquin is not relevant.
15 There was a lot of discussion about where certain
16 offsets might come from, the relative
17 effectiveness of, say, Bay Area credits on certain
18 regions in San Joaquin. Therefore, we think this
19 is still an appropriate finding that San Joaquin
20 is a very large valley, different areas have
21 different -- might receive different benefits
22 from, say, a Bay Area credit, whether it's in the
23 northern region or the central region of San
24 Joaquin Valley. Therefore, we think Finding 21 is
25 also appropriate and should be left in.

1 Finding 22, on page 44 still. We're
2 very concerned here because our discussion about
3 the amount of NOx and VOC necessary if this
4 project were located in San Joaquin, was based on
5 the fact that we didn't give any credit to the Bay
6 Area credits because we didn't think the Bay Area
7 credits would be allowed by district rules.

8 The revisions suggested here seem to
9 suggest that San Joaquin would, in fact, allow
10 those credits to be, some credit to be given to
11 those Bay Area credits, and therefore there would
12 only be some additional ERCs required. Again, San
13 Joaquin did not do a LORS analysis, and San
14 Joaquin's -- if San Joaquin had done a LORS
15 analysis they would not allow these credits;
16 therefore, the tons should stand at 216 rather
17 than reduced to 66.

18 The 66 tons that they're referring to in
19 their rewrite, the Applicant's rewrite of Finding
20 22, is actually what's in the AQMA, which is a
21 different methodology, it's not per LORS. So I
22 just want to make sure that this finding --

23 CHAIRMAN KEESE: So, you know, I'm
24 naive. So the Applicant has to comply with the
25 Bay Area LORS, which the Bay Area -- can be fully

1 mitigated, and the Applicant has to comply with
2 San Joaquin LORS? And then we have CEQA, we
3 overlay CEQA on top of that?

4 MR. LAYTON: No.

5 CHAIRMAN KEESE: Are you equating CEQA
6 with San Joaquin LORS?

7 MR. LAYTON: No. What this particular
8 finding suggests is if East Altamont were subject
9 to the jurisdiction, if either the project was
10 moved into San Joaquin or the San Joaquin boundary
11 was moved to include East Altamont, the tons
12 required would be the following. That's all this
13 finding, in our mind, is trying to suggest. This
14 does not suggest that if the project were in San
15 Joaquin Valley Unified, it would still have to
16 comply with Bay Area. Two different issues.

17 CHAIRMAN KEESE: Okay.

18 MR. LAYTON: But what the rewrite, in my
19 mind, is trying to suggest, is that, in fact, you
20 could take credit if you were in San Joaquin for
21 those Bay Area credits. If you chose to go buy
22 your credits somewhere else rather than San
23 Joaquin, you went to an upwind district, say Bay
24 Area, therefore you'd only have to supply the San
25 Joaquin X amount, 66 tons. We disagree, because,

1 in fact, San Joaquin couldn't allow the Bay Area
2 transfer because you cannot transfer credits from
3 a clean air basin to allow increases in a dirty
4 basin.

5 So we're just concerned about the
6 rewrite suggesting that the tonnage is --

7 CHAIRMAN KEESE: I think you've made
8 that pretty clear.

9 MR. LAYTON: We could say it again.

10 CHAIRMAN KEESE: I understand that one.
11 I understand this.

12 MR. LAYTON: Thank you. On the same
13 page, on Finding 27, we agree with the rewrite.
14 The Federal 24, our PM2.5 standard, while it is on
15 the books, there hasn't been a determination of
16 attainment status for this region. And therefore,
17 there's no requirements yet on how they should be
18 attaining it or not.

19 So we have wording recommendations for
20 this, and the Applicant has wording
21 recommendations for this, as well.

22 MR. GARCIA: Mr. Chairman.

23 CHAIRMAN KEESE: Mr. Garcia.

24 MR. GARCIA: Thank you. I have a
25 question on this 2.5 rule. As I understand, this

1 rule has not been implemented by EPA, and, in
2 fact, it's in litigation at this point.

3 MR. LAYTON: No. The standard is in
4 place. What is not in place are attainment plans
5 to achieve it, or attainment designations, for
6 that matter. The air districts have been
7 collecting data, and we rely on that data to have
8 a sense of what the attainment status might be,
9 but there has not been a legal determination of
10 attainment status for that standard.

11 MR. GARCIA: Okay.

12 MS. DeCARLO: That's all for staff.

13 CHAIRMAN KEESE: Mr. Sarvey.

14 MR. SARVEY: Thank you, Chairman Keese.

15 There seems to be some confusion of what
16 the role is of the air districts in this siting
17 case. Where the Bay Area and the San Joaquin
18 Valley have agreed that this project is fully
19 compliant with their LORS, I want to remind the
20 Committee that both air districts have admitted,
21 under oath, they have done no CEQA analysis for
22 the impacts in the San Joaquin Valley.

23 Staff has done that. The PMPD states,
24 on page 137, they see no fault in staff's
25 analysis. That being said, staff has recommended

1 mitigation for 149 tons of NOx, 50 tons of PM10,
2 and 24 tons of VOCs. San Joaquin Valley has
3 stated that with the million dollars of mitigation
4 they will receive, they can offset 60 tons per
5 year of NOx. This leaves 116 tons per year of
6 NOx, 50 tons of PM10, and 24 tons of VOCs that
7 remain to be mitigated under CEQA.

8 In my opinion, the Committee should
9 adopt this as the additional mitigation that needs
10 to be provided under this agreement for the
11 licensing.

12 Also, I disagree that the ammonia slip
13 should be ignored. The ammonia slip which staff
14 and the PMP deem significant should be mitigated
15 because it's a secondary PM2.5 impact of over 100
16 tons per year.

17 Additionally, 67 percent of the
18 Applicant's ERCs are pre-1990. Recent rulings in
19 the San Joaquin Valley Energy Center, a Calpine
20 facility, the EPA has disallowed the use of pre-
21 1990 ERCs in the San Joaquin Valley. All parties
22 admit that this facility lies within the San
23 Joaquin Valley.

24 I have presented evidence on the record
25 of our deteriorating air quality. We currently

1 have the most violations of the state ozone
2 standard and the federal eight-hour ozone
3 standard. PM10 violations in the project area
4 have increased from 18 in 1995 to 60 in 2001.

5 Concerning the peaker plant mitigation,
6 that mitigation was provided voluntarily. It had
7 nothing to do with the CEQA impact. It was
8 \$600,000 for air mitigation for a project one-
9 fifth the size of East Altamont. It's a poor
10 comparison.

11 The Tesla case, which is a much more
12 appropriate comparison as to staff's position, CEC
13 staff is requiring the same conclusion that the
14 East Altamont Energy staff did. Additional
15 mitigation should be provided above the AQMA with
16 the San Joaquin Valley Air Pollution Control
17 District.

18 Additionally, when we discussed San
19 Diego and the Palomar case, Sempra Energy has just
20 recently agreed to a \$185 million PM10 offset
21 program. It's a brand-new day as far as PM10. We
22 have new federal standards that must be upheld,
23 and it's much more stringent standard, so we need
24 to address those issues.

25 Additionally, this project has not

1 performed the staff recommended cumulative air
2 analysis that was asked for in December of 2001.
3 This analysis, which would contain all criteria
4 pollutants with reasonably foreseeable projects,
5 has not been performed. In such a circumstance,
6 the Committee should err on the side of caution
7 and make the Applicant provide the additional
8 mitigation.

9 In response to Mr. Garcia's concerns
10 about the Otay Mesa decision, I feel that that
11 Otay Mesa decision, if they did, in fact, provide
12 money for mitigation, is an incorrect decision.

13 Thank you.

14 CHAIRMAN KEESE: Thank you.

15 Do we have comments from any of the
16 other agencies on air? I'm going to give, we're
17 going to go -- thank you.

18 MR. PINHEY: Thank you, Mr. Chair, and
19 members of the Committee. I'm Nick Pinhey, with
20 the City of Tracy Public Works Department.

21 Just a quick comment. As we've heard
22 today, the project will have a significant impact
23 on the valley's air quality. And approximately 70
24 percent, I believe, of the emissions do end up in
25 our immediate area. And as has been discussed

1 today, and as you're aware, the Tracy Peaker
2 Project, GWF entered into an agreement with Tracy
3 to provide community benefits related to air
4 quality improvements in the immediate vicinity of
5 Tracy. Some of these included diesel retrofits,
6 additional air monitoring, public information
7 programs, lawnmower change, and so on.

8 As we have heard, the project's going to
9 provide about a million dollars to the San Joaquin
10 Valley Unified Air Pollution Control District.
11 However, as we've also heard today, further
12 mitigation is necessary and there's no specific
13 requirements as to how the funds are to be
14 applied.

15 So on behalf of the City of Tracy, as a
16 comment, we would prefer to see some similar type
17 of air quality improvement program entered into by
18 the project proponent that directly applies to the
19 Tracy area.

20 Beyond that, I'd like to also add that
21 the process of opening a dialogue with the members
22 of the community to negotiate an agreement is a
23 very positive step. In the course, during that
24 process, the Applicant gets to fully engage the
25 community in discussion of their concerns, and

1 then design a program that can address those
2 concerns for the area.

3 That concludes my comments. Thank you.

4 CHAIRMAN KEESE: Thank you.

5 Applicant, do you have any -- what we're
6 -- all right. Applicant, for the final word.

7 MR. RUBENSTEIN: Thank you, Chairman
8 Keese.

9 Just two points. First, very briefly,
10 to make sure we don't have a new issue raised here
11 with respect to pre-1990 ERCs, I just want to
12 point out, Bob, and you may not be aware of this,
13 that EPA's comments on that issue were specific to
14 credits banked by the San Joaquin Valley Air
15 District, so we're not talking about that here.

16 In addition, at last week's evidentiary
17 hearing on the San Joaquin Valley Energy Center,
18 EPA indicated that with a recent proposed
19 rulemaking that issue was resolved. So I don't
20 think there's an issue for this proceeding here.

21 With respect to the different conditions
22 regarding the additional mitigation, there are a
23 couple of points I want to make, very briefly.
24 First, while I wouldn't agree completely with Mr.
25 Layton's characterization of the relative air

1 quality trends in the San Diego and San Joaquin
2 Valleys, it's quite clear that progress in the San
3 Joaquin Valley Air Basin is proceeding at a much
4 slower rate than it is in San Diego. It's an
5 unfortunate circumstance of both geography and
6 growth, but it's a fact. Air quality is not
7 improving here in the valley as quickly as it is
8 in some other parts of the state.

9 I think that's an appropriate
10 consideration for the Committee in terms of
11 deciding whether to require impacts -- mitigation,
12 rather, for cumulative impacts, and the nature of
13 the mitigation. But I don't believe that issue at
14 all goes to Ms. DeCarlo's argument about ensuring
15 that the mitigation that's required is accurately
16 tracked in conformance with CEQA requirements.
17 Her legal argument has actually nothing to do with
18 air quality status whatsoever.

19 I would encourage all of you to take a
20 look at the mitigation condition, and we will do
21 that in our supplemental comments, that was
22 approved for the Otay Mesa Project, and compare
23 that with the condition that we proposed both in
24 our written testimony, and another version of that
25 is in the draft consensus air quality mitigation

1 plan which was Exhibit 2CC in the proceeding.

2 Our proposed condition would establish
3 the mitigation targets based on the air quality
4 mitigation agreement, which quantifies a reduction
5 of 66.8 tons per year of additional NOx that's
6 required, which is actually remarkably close to
7 the staff's estimate of what could be achieved
8 with a \$1 million payment.

9 In addition, our proposed condition
10 specifically ties into the air quality mitigation
11 plan itself, which is also referenced in the
12 mitigation agreement, and includes the list of
13 specific measures, identifies what the expected
14 benefits are of each one.

15 Finally, our proposed condition requires
16 the provision of annual reports documenting all of
17 the projects that are funded through the
18 mitigation agreement, the actual emission
19 reductions achieved, as well as the cumulative
20 emission reductions achieved to date.

21 Consequently, I believe that the condition that
22 we've proposed addresses all of the requirements
23 under CEQA, and should serve the Committee's
24 purpose and objective in trying to tie these two
25 programs together.

1 Thank you.

2 CHAIRMAN KEESE: Thank you. At this
3 time, let me tell you what my plan is. We're
4 going to hear public comment on Air. And then I
5 believe that, I don't know how many issues the
6 parties are going to bring up, but we're going to
7 have a longer discussion on Air. So after that, I
8 would like to take up Transmission and Fire, and
9 then we'll go to Water.

10 Ena Aguirre.

11 All right. Ms. Sarvey.

12 MS. SUSAN SARVEY: Good morning. Susan
13 Sarvey, for CACLE, Clean Air for Citizens and
14 Legal Equality. We're a community group, but we
15 have expanded to members in San Diego and the Bay
16 Area and Rio Vista.

17 My comments on Air Quality, I have a few
18 responses to what's been said here. Everyone
19 seems to agree that there is a cumulative problem,
20 and the cumulative analysis that was requested by
21 my Assemblywoman was not done, as testified by Mr.
22 Ngo. I have the documents here. It's obvious we
23 need this cumulative quality study done
24 immediately. I think we should have one done by
25 the pollution control district, one by Mr. Ngo,

1 and in all fairness, Applicant should get their
2 shot, too. And then we should compare what we
3 have found.

4 In terms of this idea you've put forth
5 to have targets, I'm on the Tracy Peaker Plant Air
6 Quality Mitigation, and in April, going online
7 will be an air quality station that measures PM10
8 and PM2.5, and we will still be getting
9 measurements from the Patterson Pass station.
10 Since we will be immediately this spring starting
11 to collect data, we will have accurate numbers for
12 Tracy for quite some time during the development
13 of this plant, and afterwards. If you are going
14 to have targets, I suggest that these figures be
15 put into the license and that they have to
16 compensate us that way.

17 I'm very concerned that you are
18 rejecting staff's recommendation. I have always
19 been told in these proceedings that staff is fair,
20 that they make expert analysis, and that they are
21 to be trusted, that they're not on anybody's side.
22 They have made a very good recommendation. Now
23 that we're talking about varying from their
24 recommendation, my concern is how are you going to
25 make, as a condition of licensing, mitigation

1 that's going to protect my community.

2 I had an experience with the --

3 CHAIRMAN KEESE: Ms. Sarvey, I think
4 we're --

5 MS. SUSAN SARVEY: Can I finish? I'm
6 almost done.

7 CHAIRMAN KEESE: We're going the other
8 way. We have agreed with staff.

9 MS. SUSAN SARVEY: That we need a
10 cumulative study.

11 CHAIRMAN KEESE: We have agreed with
12 staff on this.

13 MS. SUSAN SARVEY: But you don't agree
14 with their mitigation package.

15 CHAIRMAN KEESE: We've asked for
16 comments on their mitigation package.

17 MS. SUSAN SARVEY: Well, I'm commenting
18 on their package.

19 CHAIRMAN KEESE: That's fine. That's
20 what --

21 MS. SUSAN SARVEY: I want, I want my
22 PM10, PM2.5, two stations, numbers to be taken in
23 account starting in April, through the development
24 of this plant, and after this plant. I think
25 that's very important, because we will finally

1 have accurate readings for my community.

2 In the Tracy Peaker Plant, we had a
3 gentleman's agreement and it was in the
4 documentation, the written hearing things, that
5 the fire department was to get fire equipment and
6 training, but it was not made a condition of
7 licensing. They are now refusing to provide
8 equipment and training.

9 I'm very concerned if we are not
10 extremely specific within the license as to what
11 they are going to do to protect my community's air
12 quality, they will do the same thing the peaker
13 plant has done, get their license and say screw
14 you. And that is not fair to me, as a taxpayer or
15 as a person who's breathing this air. They're
16 making money, they're making me and my kids sick,
17 they're affecting the entire state's air quality,
18 and they are not being held accountable.

19 The only way you can hold these people
20 accountable and protect the people is through
21 conditions in the licensing, because the
22 compliance manager only cares about what you write
23 in the license. So if you are going to not accept
24 their staff's proposal, which is what I'm led to
25 believe, an expert, unbiased proposal, I want to

1 know how you're going to go about ensuring my air
2 quality is not adversely impacted later on. How
3 will you do this in the license. And I have heard
4 no discussion of what will be done in the license
5 to protect my community and the air quality.

6 Thank you.

7 CHAIRMAN KEESE: Thank you.

8 MS. SUSAN SARVEY: Would you like a copy
9 of the letter and Mr. Ngo's comments that the
10 study has not been done?

11 CHAIRMAN KEESE: I believe I have it.
12 We can take --

13 MS. SUSAN SARVEY: I'll give you all a
14 copy.

15 CHAIRMAN KEESE: -- Roberta will.
16 Irene Sundberg.

17 MS. SUNDBERG: Thank you. Irene
18 Sundberg, 451 Hickory Avenue, Tracy, California,
19 resident.

20 I came here today because I'm extremely
21 concerned about the cumulative air study that
22 needs to be done. And I think Ms. Sarvey's
23 suggestion on doing one from all three parties is
24 more than the right way to go. I think you need
25 to take heed with this and go forward.

1 I served on the GWF committee. I helped
2 mitigate for their funding. I was an intervenor
3 on that process. And I think it's mandatory that
4 you stipulate within your licensing agreement what
5 the staff has recommended, that there be, you
6 know, that their recommendation should be adhered
7 to. They are very fair. I've worked with them.
8 I know some of them personally now, and I
9 appreciate the fact that they are intelligent
10 human beings making decisions for our community.

11 I live within this community and have
12 lived here for 20 years. And it seems to me that,
13 you know, we're having to put up with the influx
14 of not only homes coming to our area, but power
15 plants wanting to provide energy for those homes
16 that are coming. And they need to be responsible
17 for what they're bringing with them. They need to
18 be able to produce the same type of mitigation
19 that GWF did for us. And it needs to be
20 mandatory, it needs to be stipulated within the
21 agreement, because otherwise we have no way of
22 making sure it's going to happen.

23 And I appreciate your time. Thank you
24 for coming here.

25 CHAIRMAN KEESE: Thank you. And I will

1 say that is the Committee's, but your voice is
2 what the Committee is attempting to do.

3 I have a comment, Terry Donaldson, do
4 you wish to speak at this time to this issue?

5 MS. DONALDSON: Yes, I would. Thank
6 you. I am Terry Donaldson. My physical address
7 is 6020 Linden Road, which is in the
8 unincorporated area of Alameda County. And I am
9 the next street over from the proposed plant.

10 I am rather appalled at the fact that
11 we, as the neighbors of the plant, were not
12 contacted about this meeting. Relying on the
13 Tracy press is a way of finding out about it I
14 don't think is fair for the 40 homes that are in
15 my immediate area, plus the outlying farmland.
16 And when I'm hearing the amount of tonnage of
17 pollutants that are downwind of me -- upwind of
18 me, I'm downwind of that, it's extremely
19 frightening.

20 And also, it's, I'm on the delta. And
21 all of these pollutants are not going to only land
22 on land, they're going to land in the water. And
23 a lot of us are pumping that water to use in our
24 homes. Not for drinking, of course, but, you
25 know, we're bathing in it. And I think that this

1 plant is a violation of -- well, I've had this
2 place for 40 years, and it's now going to be
3 affecting our property values, our living,
4 breathing, and I think it's unconscionable that
5 they're not even thinking about the human and
6 environmental impacts.

7 Thank you.

8 CHAIRMAN KEESE: Thank you.

9 Ms. Aguirre.

10 MS. AGUIRRE: Ena Aguirre, 937 West
11 Street, Tracy, California. I'm sorry I haven't
12 been able to follow all the process for this
13 project as I would have liked, but I had to have
14 open heart surgery, and that makes it kind of
15 hard, you know, to move around for awhile. But
16 the doctors have given me, you know, telling me
17 that I'm 100 percent okay.

18 Let me talk about my first concern. My
19 first concern is that San Joaquin Air Quality
20 Board has never had a meeting with us, has never
21 shown any interest in our health, has never done
22 anything, and therefore, giving them a blank
23 check, basically, I believe that what might happen
24 is that they might use that money to go down, I
25 don't know, San Diego, if they go that far, I have

1 no idea where they go. But I do know that even
2 though I have lived in Tracy for over five years,
3 they've never had a meeting with us. They've
4 never discussed anything. We have no idea what it
5 is that they're doing.

6 And so for you to give them a blank
7 check without requesting that they show up front
8 how they are going to use whatever mitigation
9 money might be available makes me extremely
10 concerned, simply because whatever little money is
11 there should be used as close to Tracy city as
12 possible, so that those of us who have asthma, so
13 that the kids in Tracy that have asthma, those of
14 us who are seniors, 55 and over, may at least have
15 the possibility that in the near future the air
16 will not get any worse, but, in fact, might be
17 getting better.

18 Number two, it's, you know, and as I
19 said, I have not read any of the documents. I'll
20 be up front. My statements have to do only with
21 what I heard here.

22 It sounds to me that the least biased
23 group that we have at this point seems to be the
24 staff, and I would like to see that the staff
25 recommendations be taken, you know, more

1 seriously, and that the Commission try to look at
2 them as basically, because they're, you know,
3 except for these meetings here and because the San
4 Joaquin Valley county, or whatever they're called,
5 doesn't seem to care about us, that maybe they
6 should be the group that should be heard.

7 And then the last thing is, since, you
8 know, since we are going to be able to very soon
9 have a way of finding out what our air quality is
10 going to be, how do we reopen this process if we
11 find that East Altamont, once they become
12 operational, does such a bad job in our air
13 quality that, you know, we have to go back to the
14 Commission and say look, you know, you really have
15 to take a second look at it, whatever mitigation
16 you, you know, you agree to is so bad that it's
17 making us sicker. Is there, I mean, is there any
18 provision within the Commission to reopen a, you
19 know, a power plant later on if it is found that
20 their air pollution is really worse than anybody
21 thought that it was going to be?

22 CHAIRMAN KEESE: That's somewhat a
23 rhetorical question, but I will say if you, if you
24 look at --

25 MS. AGUIRRE: No, no, no. It is not

1 rhetorical. This is a question.

2 CHAIRMAN KEESE: Let me, you asked, the
3 staff's proposal is we set targets that we monitor
4 to see if they're achieved, and that there are
5 conditions under which they must be achieved. So
6 if they're not achieved, yes, then it's back into
7 the process.

8 We don't totally reconsider a siting
9 case five or ten years down the line, but as was
10 mentioned earlier we have almost 200, I believe,
11 conditions of certification here, and they all
12 must be met or the power plant can be shut down.
13 They have to be met.

14 MS. AGUIRRE: And one of which is
15 cleaner air than what we have now?

16 CHAIRMAN KEESE: One of which is
17 offsets, yes, offsets in the Bay Area, as you've
18 heard, to the emissions, and offsets in San
19 Joaquin to the particular impacts that take place
20 in San Joaquin. What those impacts are, the
21 Applicant and the staff and San Joaquin have
22 different positions on at this time, which is what
23 we're going to have to reconcile. But there are
24 impacts. You know, we're not, you have to
25 dispense with some of the rhetoric you'll see in

1 what we've submitted so far.

2 We've heard comments from the parties
3 now. There are impacts in San Joaquin, and we are
4 going to determine what they are, and the
5 Applicant will mitigate them in order to build the
6 plant.

7 MS. AGUIRRE: Okay. Thank you very much
8 for listening.

9 CHAIRMAN KEESE: All right. With that,
10 I believe we've closed the subject of Air.

11 What I'm going to do now is we'll take
12 up Transmission, then we'll take up Fire Safety.
13 That will, it looks like, come close to our time
14 for a break. We're not going to make 1:00
15 o'clock, so we'll take up Transmission, Fire
16 Safety, and then we'll come back with Water. If
17 these go fast, we'll keep going.

18 My question would be who should bring up
19 the issue of Transmission. Applicant?

20 MR. WHEATLAND: Well, I just will say
21 for the record that the Applicant is in agreement
22 with the proposed findings and conditions for
23 Transmission Safety and Engineering. We
24 understand that the Modesto Irrigation District
25 has a comment they'd like to make, and we're

1 prepared to respond.

2 CHAIRMAN KEESE: All right. So with
3 that, staff, are you satisfied with the condition
4 at this time?

5 MS. DeCARLO: Contained in the PMPD?

6 CHAIRMAN KEESE: Correct.

7 MS. DeCARLO: Yes.

8 CHAIRMAN KEESE: All right. Then can we
9 hear from Modesto.

10 MR. POHL: My name is Greg Pohl. I'm
11 with the Modesto Irrigation District, a Senior
12 Mechanical Engineer. We're located in Modesto,
13 California.

14 As we reviewed the draft report, we have
15 some concerns regarding the language in that
16 report, and so we've submitted comments. And I'd
17 like to kind of read a statement into the record.

18 The Modesto Irrigation District, I'll
19 call it MID, has or will file comments regarding
20 this draft report and MID's mitigation
21 requirements. Contrary to statements in the draft
22 report regarding insignificant impacts to MID, we
23 take issue to this.

24 There are, we feel that there are
25 significant environmental impacts to MID's

1 electrical system that requires mitigation. In
2 this structure there are four concerned parties.
3 There's the Western Area Power Administration,
4 Calpine, ourselves, and Turlock Irrigation
5 District. The four of us have been working I
6 think in good faith to formulate a multi-party
7 agreement to iron out a number of, well, let's
8 call it technical issues.

9 This agreement would essentially
10 articulate the mitigations required. While it's
11 been MID's intent to resolve these issues without
12 the Commission's requiring mitigation, at this
13 point in time there's no real agreement on the
14 horizon. So the Modesto Irrigation District feels
15 compelled to seek formal mitigation as a condition
16 of certification.

17 We have made comments as to what that
18 mitigation might be. It could be just a matter of
19 negotiating better language than currently exists
20 in the draft report, a negotiation between MID's
21 attorney and CEC staff. But we do feel that the
22 current language in there leaves some room for
23 whether we would have adequate remedies later on
24 if agreements cannot be adequately formulated.

25 CHAIRMAN KEESE: Thank you.

1 Applicant.

2 MR. WHEATLAND: The Applicant
3 appreciates the comments that we've heard today
4 from MID. The detailed facility study for this
5 project, including the interconnections with MID,
6 has not yet been prepared. And MID has not yet
7 identified the mitigation measures with which the
8 Applicant will be required to comply in order to
9 interconnect with their system.

10 We believe that the Commission's
11 condition TSE1 addresses exactly the comments that
12 are raised by the district here this morning,
13 because that condition requires that at least 60
14 days prior to the start of grading of the power
15 plant switchyard or transmission facilities, the
16 project owner, that is, us, must submit to the CPM
17 for approval both the detailed facility study and
18 a signed letter from the project owner stating
19 that the mitigation measures selected by Western,
20 PG&E, SMUD, and MID, are acceptable.

21 So we will be required, once they have
22 identified the mitigation measures, to submit a
23 letter to the CPM certifying that those are
24 acceptable to us. So I think the process is
25 already in place to address their concerns, and we

1 have every intent of reaching agreement with MID
2 regarding the mitigation measures that are
3 appropriate, and then agreeing to, by letter, to
4 comply.

5 Ali, is there anything more that you --
6 identify yourself first, please.

7 MR. AMERLE: Ali Amerle, with the
8 Applicant.

9 No, sir, you have adequately
10 characterized all the issues.

11 CHAIRMAN KEESE: Staff, do you --

12 MS. DeCARLO: Staff agrees with the
13 Applicant's interpretation of our condition TSE1.
14 It does allow for assurances that an agreement is
15 reached between the Applicant and MID, and it does
16 give the Commission the authority to oversee.

17 MR. POHL: Again, we'll have to take
18 issue to what's been stated here. We think this
19 language needs to be tightened up some more, and
20 we think that CEC staff should, maybe even Calpine
21 staff, should meet with our attorneys and try to
22 tweak this language. Just the aspect of writing a
23 letter to the Commission telling the Commission
24 that things are adequate is -- may not be
25 satisfactory to us.

1 MR. McCUEN: Commissioner, if I might.

2 One of the things that I think is
3 probably not indicated yet is that the general
4 conditions that have been suggested at this point
5 provide that any party, member of the public, that
6 has a concern would elevate that to the
7 Commission, to staff initially, and to the full
8 Commission.

9 So there are provisions already in the
10 PMPD to take care of that. The staff will work
11 with MID and the Applicant to have additional
12 discussions. I must say for the record, however,
13 that the extant studies before this Commission do
14 not indicate an environmental impact caused by
15 EAEC with regard to system reliability.

16 CHAIRMAN KEESE: Thank you. I --

17 HEARING OFFICER WILLIAMS: Excuse me.
18 Before you begin, Al, would you just state your
19 name for the record?

20 MR. McCUEN: I'm sorry. Al McCuen,
21 Senior Transmission Planner, CEC staff.

22 HEARING OFFICER WILLIAMS: Thanks.

23 CHAIRMAN KEESE: Thank you.

24 I read this section as saying that the
25 Applicant has to send a letter saying that what

1 you require is accepted. So it's not --

2 MR. POHL: I think the Commission should
3 also, as a condition, also get a letter from us
4 agreeing that, not that it be solely dependent on
5 the Applicant's statement.

6 CHAIRMAN KEESE: I am going to take you
7 up on your offer. I think that the best thing
8 here would be for informal discussions, and if we
9 can get something from the parties on this, if
10 there is a tweaking that can take place --

11 MR. POHL: I think that would be
12 excellent. I think this can be easily worked out.
13 We are making progress. But one last comment.
14 For the record, I do want to state that there is a
15 significant environmental impact to MID's
16 electrical system. It's just been determined in
17 the last two weeks or so.

18 CHAIRMAN KEESE: Thank you.

19 Okay. Now we'll, that closes that. Now
20 we'll take up Fire Safety. And have you seen
21 the --

22 MR. WHEATLAND: Yes. The Applicant
23 is --

24 CHAIRMAN KEESE: -- the letter submitted
25 by the City of Tracy Fire Department?

1 MR. WHEATLAND: No, we have not seen
2 that letter. I have not.

3 CHAIRMAN KEESE: We received it this
4 morning. Can you share --

5 MR. WHEATLAND: I'll read that over.

6 CHAIRMAN KEESE: Okay.

7 MR. WHEATLAND: Is there -- excuse me.
8 Chairman Keese, is there an additional copy that
9 we can --

10 CHAIRMAN KEESE: There isn't any copy
11 right now.

12 MR. WHEATLAND: I'll get some copies.

13 CHAIRMAN KEESE: Okay. Thank you.

14 (Parties speaking simultaneously.)

15 CHAIRMAN KEESE: We'll let you, while
16 he's making copies, go ahead and start.

17 MR. FREGOSO: Okay. Basically -- Larry
18 Fregoso, with, Battalion Chief with the Tracy Fire
19 Department, 432 East 11th Street.

20 Basically, what the letter is -- I'm
21 going to summarize in a couple of words -- is, in
22 the report it indicates that we will be part of
23 the mutual aid system along with Alameda County,
24 and we're here to refute that.

25 At this time, and as I mentioned at the

1 last hearing, Tracy Fire has not been dealt with
2 or mitigated at any time with any of the energy
3 plants. And we do not plan to be providing mutual
4 aid or any type of services to the energy plant,
5 specifically the Calpine plant on Kelso Road.

6 Right now, we're under contract with the
7 community of Mountain House, and when that station
8 is in place we will be within three and a half
9 miles of the plant itself, probably within a five
10 minute response time. And speaking on that
11 briefly, it shows here that Alameda County can
12 come all the way from Livermore in ten minutes,
13 but it shows that we can only get to Calpine,
14 which is only three miles away, in six minutes,
15 without all the traffic in between. So it kind of
16 referenced to how do they balance these response
17 times.

18 Second is Alameda County's second
19 response engine comes in out of Dublin, so during
20 the summer months when they're inundated with
21 grass fires, they don't have a second unit any
22 closer than Dublin, and they're usually tied up
23 with them.

24 And what we want to go on the record and
25 letting you know that our commitment is first and

1 foremost going to be to the community of Mountain
2 House. At no time in the future, unless we
3 mitigate the impact that's going to be addressed
4 to our department, at no time do we intend to
5 strip that community for any other reasons other
6 than for its services only. We do not plan to
7 respond to Calpine for either missed calls when
8 those calls require immediate response, and time
9 in action is first and foremost concerning the
10 health and life of the individual.

11 But the fact that no one here has
12 chosen, but we continually being referenced in
13 your solutions in the reports, on page -- on the
14 back page --

15 CHAIRMAN KEESE: I, I did --

16 MR. FREGOSO: On 195, number 7, it still
17 continues to reference us as part of the solution.

18 CHAIRMAN KEESE: I did glance at your
19 letter when you first handed it to me today, and
20 we will take care of your specific referenced
21 corrections. The, I'm more interested in the
22 general issue, the --

23 MR. FREGOSO: Okay.

24 CHAIRMAN KEESE: -- what you think we
25 can, tell us what -- we can take care of the

1 general references in our document.

2
3 MR. FREGOSO: Okay.

4 CHAIRMAN KEESE: Is there anything else
5 that you're asking us to do?

6 MR. FREGOSO: Basically, either that
7 someone sit down and mitigate with the department
8 the impact, so that we can act as a good neighbor
9 and can respond to the facilities that are within
10 our jurisdiction. Or at least with the community
11 service district of Mountain House, since they're
12 the initial provider of service that we're going
13 to be providing to. Or publicly inform the public
14 that we're not coming because we happen to be an
15 agency that's publicly oriented, and it's very
16 noticeable when we don't show up and we receive
17 the negative impact when the fire engine does not
18 respond, even if it's down the road.

19 People have to know that Calpine
20 knowingly does not, is not willing to negotiate
21 for any services, so that if we don't show up that
22 the individual who expires and loses his life
23 because of the lack of attention in the future, it
24 is at no fault of the Tracy Fire Department. And
25 that Calpine knowingly took this, and the Energy

1 Commission knowingly accepted those terms at that
2 time.

3 We have no doubt that someone, somewhere
4 along the line, will lose their life on the job,
5 whether it's under a cardiac arrest or an incident
6 on the job, at some time in the future. And at
7 this time it may not be as important, unless that
8 individual is a specific individual, and who he
9 may be would have to be the importance of that
10 individual when this will be discussed at a later
11 future date.

12 So we want you to do, because the only
13 thing that these hearings have done since they've
14 started is they've strained the relationship
15 between ourselves and Alameda County, who has
16 taken the stance as sole provider of emergency
17 services to the area, that we've all but
18 terminated mutual aid with Alameda County. We no
19 longer respond into their area. We, the private
20 citizens who are supposedly the good neighbors of
21 this plant are the ones who are suffering at this
22 time. The commuters from the community of Tracy,
23 who travel into Alameda County, who are, now are
24 the receivers of poor quality of service because
25 of this, no one has been willing to sit down and

1 negotiate the impact.

2 But this is what's happening, and we
3 just wish that someone would take a little bit
4 more common sense approach to why do we not go
5 back to what is the nearest agency providing
6 emergency services to the area, and why can't
7 someone sit down and work out with properly what's
8 proper for the people who are going to be working
9 or traveling in the area.

10 CHAIRMAN KEESE: Thank you. Applicant?

11 MR. WHEATLAND: I would only comment
12 that this letter I think is based on the confusion
13 that the PMPD, as it is structured, first recites
14 the positions of the parties, and then discusses
15 the evidence. And the references to mutual aid
16 are merely restating the positions of the parties
17 that the Committee heard during the course of the
18 hearings.

19 But the Committee's discussion itself
20 expressly does not assume that the Tracy Fire
21 Department will honor its mutual aid obligations.
22 It assumes that that will not happen. And there
23 are no findings or conclusions that are based on
24 the assumption that Tracy would provide mutual
25 aid. So I think the PMPD has correctly addressed

1 the issues, the factual situation, and Mr.
2 Fregoso's concerns.

3 CHAIRMAN KEESE: Staff?

4 MS. DeCARLO: Yes. Staff concurs with
5 the Applicant's statements. We just want to
6 emphasize that the record clearly supports that
7 with or without Tracy Fire Department's
8 participation in the mutual aid agreement, the
9 project won't have a significant impact in the
10 area of fire protection.

11 Additionally, I believe Mr. Paul
12 Sensibaugh is here, from the Mountain House
13 Community Services District, and he might have
14 some comments on this matter.

15 MR. SENSIBAUGH: May I address the
16 Committee, please. Paul Sensibaugh, from Mountain
17 House Community Services District.

18 Staff just contended that there are no
19 significant impacts, and my opinion is that if
20 that is truly the case, then I don't know why
21 there's a mitigation in there of \$2.5 million to
22 move a fire station in Alameda County closer to
23 the site.

24 The truth of the matter is there is an
25 impact to the Mountain House Community Services

1 District, as alluded to by our chief from the city
2 of Tracy. We feel that there is going to be a
3 need for response to adequately prepare this plant
4 for what is necessary, the protection, that they
5 are going to in fact want to use our Mountain
6 House station. And if that is the case, there is
7 an impact. We think the mitigation ought to be in
8 Mountain House and not in Alameda County.

9 Thank you.

10 CHAIRMAN KEESE: Thank you. I also have
11 Mr. Andrew Kellog on my list.

12 MR. KELLOG: Thank you. I am Andrew
13 Kellog. I'm a resident of Tracy, also a member of
14 the Tracy Fire Department, and also the president
15 of the Tracy Firefighters Local 3355.

16 I just want to go on record to make it
17 clear. We're talking about the no impact that
18 this response is going to have on this site if
19 Tracy does not provide services.

20 Initially, we're talking in the report,
21 that I was able to see, we're talking 20 minute
22 response time. When we're talking about fire,
23 things burn, and they take a little bit longer to
24 burn. But we're not just talking about fire when
25 we're talking about this mitigation that's being

1 considered for Alco. We're primarily talking
2 about emergency medical services.

3 Emergency medical services is our
4 primary response, at least it's over 80 percent of
5 both of our agencies' response numbers. With
6 those numbers and with the availability of a unit
7 to respond, and also taking into consideration
8 what the brain dies at, in four to six minutes
9 without oxygen, and we're talking the closest unit
10 is going to be 20 minutes away, that's totally
11 irresponsible. That's just on the MS, the medical
12 side of it.

13 On the fire side of it, the impacts
14 aren't just going to consider Alameda County.
15 It's the where is the smoke going, where is the
16 fire going to burn to. Everything's burning
17 towards us. So it is directly, and does directly
18 impact the Tracy Fire Department, the Tracy
19 firefighters, and also the local community.

20 So there's a lot to be considered, not
21 just who's handling the fire responses. It's a
22 matter of whose responsibility is it. Our
23 responsibility is to the community of Tracy, the
24 surrounding area, and Mountain House. The impact
25 that just a fire situation is going to have does

1 not impact Alameda County. It's going to impact
2 us. It's going to impact everybody that we serve,
3 and impact us, as firefighters, directly putting
4 ourselves in danger and our lives in danger of
5 trying to suppress any problem that's going to
6 develop out there. So there is a definite impact
7 that we're going to feel, as the Tracy Fire
8 Department.

9 Yes, we don't have an obligation to
10 provide services based on mutual aid, automatic
11 aid, or any other agreement. There is a moral
12 obligation that we do have, also. And again, our
13 moral obligation is to our community and to our
14 firefighters. So there's going to be a level of
15 service that we're going to have to provide to
16 protect ourselves, and to protect our own
17 community.

18 And I think it's pretty important that
19 there is some level of mitigation that's looked at
20 and considered throughout this process, not just
21 to say 20 minute response time is totally
22 acceptable from Alameda County Fire. That's
23 crazy. It's just crazy. Twenty minutes is not
24 acceptable. And 20 minutes I think is a pretty
25 good number if we're looking at between the hours

1 of 3:00 and 7:00 p.m.

2 I think it takes longer than 20 minutes
3 to get over the hill over to here. Commute times
4 can vary in that area from 20 to an hour and 20
5 minutes, depending on the conditions. Just
6 because we have lights and sirens on our fire
7 engines doesn't mean people get out of our way.
8 We're still held up in traffic. So Alameda County
9 I think is irresponsible when it comes to those
10 response numbers. And if they think that it's
11 going to be a ten minute response time from
12 Greenville and 580, I think it's outrageous. It
13 just, it just is outrageous.

14 So I'd just like to go on record just to
15 support the Tracy Fire Department and voice the
16 concerns of the Tracy firefighters that feel that
17 it is important that Tracy Fire is considered in
18 the mitigation of this fire/EMS situation.

19 Thank you.

20 CHAIRMAN KEESE: Thank you. We do
21 understand the tension that has been created here,
22 and the impact on mutual aid, which is very
23 unfortunate.

24 Is there anybody else who cares to speak
25 specifically to the issue of fire?

1 MR. SARVEY: Yes, I would like to.

2 CHAIRMAN KEESE: Did I not give you a
3 chance on this?

4 MR. SARVEY: Not at this point.

5 CHAIRMAN KEESE: Okay. Go ahead.

6 MR. SARVEY: Thank you.

7 The Energy Commission has a statutory
8 responsibility to meet and confer with affected
9 agencies and resolve their issues. This has not
10 occurred in relation to the Tracy Fire Department.

11 The PMPD defers to Alameda County's
12 testimony that it can respond in ten minutes in
13 the East Altamont Energy Center, even though the
14 Alameda County Fire Department's expert witness,
15 under oath, has admitted that he has not even
16 verified the response times and does not even know
17 the distance from the firehouse to the project
18 site. The distance is 16 miles.

19 This same company, Calpine, just three
20 weeks ago had pipeline explosion at one of their
21 peaker plants in the Bay Area. This is not a
22 benign plant.

23 In relation to that, in Hazardous
24 Materials, the PMPD defers to Alameda County's
25 Fire Department's estimate of hazardous materials

1 response time of 30 minutes from Castro Valley,
2 while expecting our firefighters to respond to an
3 anhydrous ammonia incident or other incident at
4 the East Altamont Energy Center without proper
5 equipment, training, or funding. I take great
6 exception to the Committee and Calpine exposing my
7 firefighters to the risk, and burdening Tracy's
8 taxpayers with no compensation for the community.

9 Thank you.

10 CHAIRMAN KEESE: Thank you. Ms. Sarvey.

11 MS. SUSAN SARVEY: Susan Sarvey, for
12 CACLE.

13 I am going to go to another community
14 group here in my community called Tracy Tax Watch,
15 and I am going to propose that we immediately
16 start a petition to put on the ballot that the tax
17 dollars of the citizens of Tracy and the
18 surrounding community not be used to respond to
19 any power plant on our ground or outside of our
20 ground, because they are presenting a risk to my
21 firefighters and they are all refusing to provide
22 equipment, they don't want to pay for gas, they
23 don't want to pay for maintenance, they don't want
24 to pay for manpower. I'm not making any money off
25 this plant. You're not making electricity for my

1 community. I want you to pay your own way.

2 I expect that in the licensing, to deal
3 with this issue of who's right, who's wrong, that
4 you put a condition that if anything occurs, a man
5 has a heart attack, if the fire department isn't
6 there in under ten minutes, he is dead. Those are
7 the statistics. So if he going to die, or he is
8 going to live, it's going to depend on my fire
9 department in all probability. If my fire
10 department responds to anything at this plant, as
11 a condition of licensing you should order them to
12 pay for my fire department's gas, my fire
13 department's maintenance, my fire department's
14 manpower, and for any associated health risks or
15 injuries that occur while they are on the job.
16 That is only fair.

17 That is only fair. You can all
18 speculate about who's going to go, who's not going
19 to go, and what's going to be done. But when the
20 fire starts and the flames are 30 feet high, and
21 they're coming towards my town, my bet is my fire
22 department is going to protect me, because they
23 are honorable men. These are not. And if you are
24 not going to require them to be honorable, then
25 you put a condition in their license that they

1 have to reimburse us, because they should not be
2 allowed to take my tax money and put my public
3 health and safety at risk.

4 While my fire department's going to
5 fight their fire or respond to their injured
6 employee, who's taking care of my community?
7 Nobody. And we get no money. So a man in Tracy
8 dies because they've gone to save the man over
9 there. If you want there to be any morality in
10 this situation, you make this a condition of
11 licensing that they take care of my fire
12 department.

13 Thank you.

14 CHAIRMAN KEESE: Thank you.

15 That's the last. Do you have any
16 response? Thank you.

17 Is this Mr. Ornellas?

18 SUPERVISOR ORNELLAS: Yes.

19 CHAIRMAN KEESE: And would you, we've
20 taken up the -- we give you great deference --

21 SUPERVISOR ORNELLAS: Supervisor
22 Ornellas.

23 CHAIRMAN KEESE: Supervisor. I'm sorry.
24 We give great deference to county officials, but
25 we have taken up the issue of Air. We're dealing

1 with the issue of Fire right now. You're welcome
2 to speak.

3 SUPERVISOR ORNELLAS: I'll make it real
4 fast. Thank you.

5 CHAIRMAN KEESE: Sure.

6 SUPERVISOR ORNELLAS: Leroy Ornellas,
7 San Joaquin County Supervisor, representing the
8 Fifth District, which is this district.

9 I am here representing the district.
10 I'm not here at the bequest of the board. But I
11 do want to emphasize the remarks that were made by
12 Paul Sensibaugh, the General Manager of MHCSO, and
13 also those that expressed concern about the fact
14 that our fire departments here in this area might
15 be impacted. And I hope that some consideration
16 is given to the Tracy Fire Department in your
17 final report on this matter.

18 Thank you.

19 CHAIRMAN KEESE: Thank you very much.

20 All right. We're, that dispenses with
21 the issue of Fire, Fire Safety.

22 FROM THE AUDIENCE: Excuse me. She has
23 a couple of comments on Fire and was never called.

24 CHAIRMAN KEESE: Well.

25 MS. EMMA SARVEY: Just another Sarvey.

1 CHAIRMAN KEESE: Oh, all right.

2 (Laughter.)

3 CHAIRMAN KEESE: All right. Emma, this
4 is Emma. All right. Sorry. I thought I only had
5 one on Fire Safety.

6 MS. EMMA SARVEY: I guess you all --

7 CHAIRMAN KEESE: You're not related to
8 anybody here, are you?

9 MS. EMMA SARVEY: Oh, sure. This is my
10 one and only son. However, it appears to me that
11 the fire, the fire protection issue has not been
12 addressed.

13 My husband was on a rural fire
14 department before he died in 1993. And when
15 Safeway put their plant here, they were required
16 to give us some fire protection. And they're, our
17 exposure to anything from them is minimal compared
18 to what Calpine has, or GWF. Or Tesla. Any one
19 of them.

20 I would like to say it's an oxymoron to
21 think that it doesn't matter, that you don't have
22 to do this, but if you think about it you're not
23 only talking about the people who work at Calpine,
24 you're also talking about the people at Mountain
25 House. What effect, what will happen if they get

1 a fire at Calpine? Those people, and the people
2 from Terry Donaldson's area, are going to be,
3 going to be impacted by any fire that happens at
4 Calpine. And also, the appearance of Calpine is
5 not going to be very good for those people.

6 And I just, I would just like to go on
7 record to say that I think that the fire issue
8 should definitely be resolved before the plant is
9 even built. Thank you.

10 CHAIRMAN KEESE: Thank you.

11 Is lunch ready?

12 FROM THE AUDIENCE: Lunch is ready.

13 CHAIRMAN KEESE: Then why don't we take
14 a break at this time, and we'll come back and
15 start on Water.

16 (Thereupon, the lunch recess
17 was taken.)

1 AFTERNOON SESSION

2 CHAIRMAN KEESE: Well, we had started --

3 MR. BOYD: Commissioner Keese, I also in
4 my comments was, in addition to the Visual
5 Resources -- we're going to do Water next, is that
6 correct?

7 CHAIRMAN KEESE: We're doing Water.

8 MR. BOYD: Okay. The only other thing I
9 see that you didn't cover was the Bio and the
10 relationship between the Bio and the Air. I don't
11 know if that came up in the Air discussion
12 earlier. Did you guys talk any about the
13 collateral impacts on Biological Resources from
14 the failure to adopt staff's recommended
15 mitigation plan for Air?16 CHAIRMAN KEESE: I don't want to go over
17 the whole thing, but essentially I did indicate at
18 the front end that the Committee is inclined to
19 feel there was significant impact; that that has
20 CEQA impacts in San Joaquin; that we will have to
21 set targets and monitoring -- they're using the
22 word "targets" loosely -- and monitoring. So we
23 had asked everybody to respond to staff's proposed
24 conditions in that area.

25 So, rather than what you read in here,

1 we indicated we're thinking a little differently
2 after receiving the comments.

3 MR. BOYD: Okay. I also heard that
4 you're going to revisit the Air part of the PMPD.

5 CHAIRMAN KEESE: That's what I said.
6 That's what I've just said.

7 MR. BOYD: Okay. So --

8 CHAIRMAN KEESE: Rather than reading
9 what you see in here --

10 MR. BOYD: If, if your intent is to
11 address any impacts that you would also, that
12 would occur on Biological Resources, if staff's,
13 if the purpose is to address what staff is
14 offering up for their mitigation in this, this
15 revision, then I think you should cover the
16 Biological Resources. And if you agree, that's
17 fine with me.

18 CHAIRMAN KEESE: I would think -- I
19 would think it has.

20 MR. BOYD: Okay. Thank you.

21 CHAIRMAN KEESE: Okay. The issue is
22 Water. Applicant.

23 MR. WHEATLAND: Thank you, Chairman
24 Keese.

25 The Applicant is in full agreement with

1 the points that you raised here this morning, in
2 summarizing the issues this morning. We certainly
3 agree that the most favorable outcome and the one
4 that we are striving to attain is that this
5 facility will use recycled water, with raw water
6 as a backup source.

7 We agree with your comments regarding
8 the sufficiency of supplies of BBID, and that this
9 project can operate without any significant
10 adverse environmental impact, and without any
11 significant impact to any BBID customer.

12 We also agree with you that all of the
13 parties, Mountain House, TriMark, BBID, and the
14 Applicant, all have strong incentives to reach an
15 agreement regarding the supply of recycled water.

16 We also very much agree with the
17 preliminary guidance that the Committee provided
18 during the course of the evidentiary hearings.
19 First, to require that the Applicant use all
20 recycled water made available to them by BBID, to
21 the extent that we need water to operate the
22 facility; to require the Applicant to use due
23 diligence to locate additional supplies of
24 recycled water should BBID not deliver a specified
25 percentage of our recycled water needs by a date

1 certain; and the third point that was raised back
2 then was not to tie the hands of the parties in
3 accomplishing the delivery of recycled water by
4 imposing terms that BBID, Mountain House, or other
5 supplier would be required to accept.

6 And we, in our opening brief in this
7 proceeding, fashioned a proposed Condition of
8 Certification for Water 5 and 6, where we tried as
9 precisely as we could to match the guidance that
10 the Committee had provided in these areas.

11 We do have some concerns with the
12 Conditions of Certification as currently proposed,
13 and I'll briefly go over those. Those are
14 summarized in our written comments, and I'm not
15 going to repeat in detail those arguments. But we
16 are concerned with the requirement that the
17 project use a fixed quantity of raw water in the
18 year 2020.

19 This is a prescriptive requirement that
20 in our opinion would be very difficult, if not
21 impossible, for us to finance the project with
22 this type of condition in place. And the reason
23 for that is, is that by imposing a fixed quantity
24 of raw water it presumes the availability of a
25 certain percentage of recycled water. And there

1 is no one today, I believe, that is in a position
2 to guarantee that any particular quantity of
3 recycled water will be available in the year 2020.

4 We are, though, certainly committee, and
5 I want to stress this again, to use a due
6 diligence and our best efforts that in the event
7 that any particular quantity of water cannot be
8 received in the year 2020, to find alternative
9 sources or solutions. But we wouldn't want a
10 forecast of available recycled water to
11 potentially impair the ability of the project to
12 operate in any given year.

13 We are also concerned with a requirement
14 that would require the Applicant to negotiate a
15 recycled water agreement with BBID prior to the
16 start of construction. We certainly realize that
17 such an agreement is going to be necessary, but we
18 have concerns about imposing a specific deadline
19 for that requirement, because before BBID can
20 agree to provide us recycled water, they must
21 execute an agreement with the Mountain House
22 Community Services District to obtain that supply.

23 That is, before they can contractually
24 be obligated to provide it to us, they have to
25 obtain that right from the Mountain House

1 Community Services District. And there is some
2 uncertainty as to whether or not the district will
3 be in a position, BBID, to obtain such an
4 agreement with the Mountain House Community
5 Services District.

6 Moreover, where there is a requirement
7 that one party must have an agreement, for
8 example, the Applicant, before we can begin
9 construction of our facility, it tends to distort
10 the bargaining relationship between the parties
11 because the other party then has quite a bit of
12 leverage over the eventual outcome.

13 We think the best agreement that can be
14 reached between BBID and Mountain House is an
15 agreement that's at arm's length, where the
16 parties negotiate out of their mutual interests
17 rather than a specific prescriptive requirement.

18 We are also concerned about a
19 requirement that would give East Altamont priority
20 over all of the water that would be provided by
21 the Mountain House Community Services District.
22 As we've indicated in our written comments, and
23 during the hearings, we believe that BBID, as the
24 water service provider for the district, should
25 have the discretion and flexibility to assign that

1 water in the way that it makes most sense
2 economically and environmentally to all of their
3 customers.

4 And while we're certainly prepared to
5 receive and accept all of the water that they
6 would offer to us, we believe it would be
7 inappropriate to require at the outset of this
8 project that we receive all such supplies. You
9 may recall, Chairman Keese, considerable
10 discussion about a golf course that is planned
11 within the Mountain House Community immediately
12 adjacent to the recycled water facility. Should
13 BBID and Mountain House mutually agree that that
14 facility, for example, is best served by a portion
15 of the recycled water supply, we see no need to
16 require or to prevent the parties from agreeing to
17 that.

18 And then, finally, we are concerned
19 about a requirement for the construction of the
20 pipeline prior to the operation of the facility.
21 Obviously, by designing our plant to receive
22 recycled water, we contemplate eventually a
23 pipeline being constructed. But again, to require
24 it prior to operation, there is no assurance at
25 this point that the Mountain House Community

1 Services District or the San Joaquin Board of
2 Supervisors will agree to such a condition. This,
3 again, like the recycled water agreement, we
4 believe it something that's best arranged and
5 negotiated out of the mutual interests of the
6 parties.

7 So we, in summary, very much support and
8 are committed to the use of recycled water for
9 this facility, but we believe that the guidance
10 that the Committee provided during the evidentiary
11 hearings is the appropriate course, and we would
12 commend to you our proposed Conditions 5 and 6 as
13 a way of fully responding to those issues.

14 That completes my comments on these
15 issues.

16 CHAIRMAN KEESE: Thank you.

17 Staff.

18 MS. DeCARLO: Thank you.

19 We agree with the Committee's position
20 that recycled water should be maximized and raw
21 water allowed to supplement such use as necessary
22 to meet the project's needs. However, the
23 conditions proposed by the Applicant will not
24 accomplish this.

25 There is substantial evidence in the

1 record to support a finding that the project has
2 the potential to result in significant adverse
3 impacts. Based upon BBID's initial projections,
4 BBID's projected average annual freshwater demand
5 is expected to exceed its 50,000 acre/feet
6 allotment of raw water within the lifetime of the
7 project. BBID's subsequent projection still shows
8 an exceedence of demand when the East Altamont
9 Energy Center's potential water use is factored
10 in. Therefore, based upon figures provided by the
11 Applicant and BBID, the Committee correctly found
12 that the proposed project has the potential to
13 result in significant adverse impact.

14 CEQA clearly acknowledges that a
15 potential for significant impact may exist where
16 sufficient water supplies may not be available to
17 serve the project from existing entitlements and
18 resources. The use of this restricted supply of
19 water by the project could impact other water
20 customers who must compete for limited high
21 quality supplies and have few alternatives to meet
22 their needs. Therefore, the Committee
23 appropriately found that the project has the
24 potential to create a significant adverse impact
25 if not mitigated.

1 And now I'll just address some of the
2 main points that the Applicant has raised in their
3 comments on the PMPD.

4 CHAIRMAN KEESE: Thank you.

5 MS. DeCARLO: Staff believes that the
6 potential for significant adverse impact, along
7 with state policy promoting the use of recycled
8 water and the Commission's independent authority
9 under the Warren-Alquist Act to make findings,
10 provides compelling reasons to require the
11 execution of a water services contract prior to
12 start of construction, to require the construction
13 of the recycled water pipeline prior to operation,
14 and to limit the consumption of raw water and
15 recycled water is physically available.

16 Now, the Applicant makes some claim in
17 their comments that there is no potential for a
18 cumulative impact because the definition of
19 probable future project in CEQA restricts what the
20 Committee can look at when considering cumulative
21 impacts. The Applicant overlooks the fact that
22 the CEQA guidelines state that probable future
23 impacts may be limited to the identified projects.

24 This definition serves as a minimum of
25 what an agency must consider in analyzing

1 cumulative impacts, and not a maximum, as the
2 Applicant argues. Since BBID referenced these
3 projects in its projections, it is perfectly
4 reasonable and appropriate for the Commission to
5 include these projections in its analysis.

6 The Applicant also made some arguments
7 regarding evidence of competitive cost for the
8 recycled water. There is substantial evidence to
9 support a determination that recycled water can be
10 provided to the project at a competitive cost.
11 The Mountain House Community Services District
12 stated in a letter to staff that recycled water
13 could be competitively supplied to BBID and that
14 their interest in providing such water was merely
15 in offsetting the cost of the provision of the
16 water.

17 Additionally, the recycled water
18 feasibility study found that supplying recycled
19 water to the center would be the cheapest among
20 the options identified. Even the MOU between BBID
21 and East Altamont Energy Center states that
22 recycled water shall be furnished at a reasonable
23 cost to the East Altamont Energy Center.

24 Additionally, Water Code Section
25 13580.7, which is triggered by staff's proposed

1 Condition Water 6, which was adopted in the PMPD,
2 contains provisions ensuring that recycled water
3 is provided at a reasonable cost. The Applicant
4 has not provided any evidence on the record that
5 recycled water would not be comparably priced.

6 The proposed Conditions of Certification
7 that Applicant offers in their comments are not
8 substantially different than the ones they
9 proposed during hearings, and do not comply with
10 LORS as they propose. The conditions still leave
11 in the hands of BBID the decision of whether the
12 project would use any recycled water at all, and
13 if so, how much. These decisions would not be
14 based on the physical availability of water from
15 Mountain House Community Services District, but
16 instead on some other undefined set of factors,
17 including possibly the financial interest of BBID.

18 Allowing another agency to determine the
19 extent to which mitigation will be required, if at
20 all, and the extent to which state policy and LORS
21 will be followed, is just as unacceptable as
22 allowing another agency veto authority over the
23 project.

24 In the end, Applicant's condition does
25 not require recycled water at all, only the vague

1 requirement of due diligence to pursue other
2 sources of recycled water supply if BBID does not
3 meet certain low thresholds of supply.

4 The Applicant has asked for substantial
5 revisions to 15 specific findings. These
6 revisions are not based on substantial evidence in
7 the record, and do not support the Committee's
8 final decision. They are an attempt to insert the
9 Applicant's biased opinion regarding the evidence
10 in place of the Committee's, and should therefore
11 be rejected.

12 And if you would like, I'll go through
13 those specific findings that they wish to --

14 CHAIRMAN KEESE: I don't think that
15 that's necessary.

16 Let me ask you a question. If the
17 Committee should determine that BBID has a
18 sufficient supply of raw water to handle this
19 plant along with all its other needs, does that
20 change your, staff's position as to what we should
21 mandate BBID to do?

22 MS. DeCARLO: No.

23 CHAIRMAN KEESE: Override BBID?

24 MS. DeCARLO: No, it does not. Staff
25 still believes that because recycled water is

1 available it should be required to the fullest
2 extent of its availability.

3 CHAIRMAN KEESE: Does that depend on
4 your determination of what potable water is versus
5 raw water?

6 MS. DeCARLO: No. That's one of the
7 factors we considered, but that's not the only
8 determination.

9 CHAIRMAN KEESE: I will say, as, I mean,
10 you're welcome to comment on the specifics of the
11 Applicant, but this particular section is going to
12 be totally rewritten. So I think you -- relying
13 on either the language or the conclusions is not,
14 basing your comments on those is not particularly
15 useful to the Committee at this time.

16 We see incentives on all the parties to
17 participate in a scheme or system of getting
18 recycled water to the plant. We recognize a
19 political barrier that exists today with the Board
20 of Supervisors having an opposed position on the
21 project and being in control of Mountain House.
22 And that presents a barrier as to open negotiation
23 between the parties at this time.

24 We would like, we are willing to look at
25 a structure that talks about what we've all agreed

1 to now, which is that the Applicant will use
2 recycled water. But we're not inclined, as I
3 tried to say at the front end, we are not inclined
4 at this time to order Byron Bethany to contract.
5 We're not inclined to order the Applicant to
6 contract. There are other sources of potential
7 recycled water than Mountain House, and I think
8 they should stay on the table. There's Tracy,
9 there's Mountain House, Tracy Hills, and a fourth.
10 So I think if you can give us your ideas on how we
11 might assure down the line that EEAC -- EAEC uses
12 recycled water, that's what we would like.

13 And it may be that you have to submit
14 this in writing afterwards, but what we're looking
15 for, we're in agreement with what all the parties
16 say they want, which is that recycled water go to
17 this. We're in line with, we take the Applicant's
18 word that they're willing to take all the recycled
19 water that comes and they're willing to go 100
20 percent recycled water.

21 Now, let's have a structure that does
22 that without -- that as loosely as possible leaves
23 the parties flexible to get to that, to accomplish
24 that. With timeframes, if you like.

25 MS. DeCARLO: Okay. And on that point,

1 I do believe that Soil and Water's 5, as contained
2 in the PMPD, does allow for that flexibility. It
3 initially identifies the use of recycled water
4 provided by Mountain House Community Services
5 District, but towards the tail end of that
6 condition it does state that if it becomes
7 apparent that the project cannot obtain recycled
8 water from that district, they shall come back to
9 the Compliance Project Manager with an alternative
10 plan for the provision of recycled water.

11 CHAIRMAN KEESE: What is your reaction
12 to their objection to the fact that they can't
13 finance it if they have that provision and it said
14 that they must not exceed 38 percent of total
15 water demand from --

16 MS. DeCARLO: I believe the projections
17 that were used to come up with that percentage
18 were very conservative. The Applicant, BBID, all
19 the parties involved agreed to those projections,
20 that they were an accurate projection. There's no
21 indication that there's been a change of
22 circumstance which those projections would not now
23 be valid. And additionally, other projects have
24 been required certain limits on water supply, and
25 they have been financed.

1 So, I mean, I don't have any particular
2 experience with financing power plants, but I
3 believe our --

4 CHAIRMAN KEESE: Again, we have a
5 complication in this case, and that is an
6 inability of the Applicant to contract with the
7 appropriate parties as we're going through this
8 process, which would be very nice. I mean, I
9 really think on this issue there is alignment of
10 goals between everyone, between the Applicant, all
11 the parties and staff. The goals, we know we have
12 alignment on. It's the process of getting there
13 that we have two different --

14 MS. DeCARLO: Right. And the Board of
15 Supervisors just recently issued a resolution
16 stating their support for the idea of providing
17 full recycled water to the East Altamont Energy
18 Center. And Mr. Paul Sensibaugh, from Mountain
19 House Community Services District, is also here to
20 comment if the Committee would like clarification.

21 CHAIRMAN KEESE: Yes, we're not, the
22 Committee's not aware of that.

23 MS. DeCARLO: Yes. Staff included it at
24 the tail end of our comments. We had just
25 received it the day prior to when comments were

1 due.

2 CHAIRMAN KEESE: Thank you.

3 Okay. So I don't really believe it will
4 be helpful to go through their specific -- either
5 the specifics that we have listed or their
6 comments on our specifics would not helpful to the
7 Committee at this time.

8 MS. DeCARLO: Right.

9 CHAIRMAN KEESE: General comments about
10 it are welcome.

11 MS. DeCARLO: Okay. The Applicant calls
12 into question the support for a determination that
13 recycled water will be available by the time the
14 project begins operation. Staff believes there is
15 substantial evidence in the record to support
16 that. The Applicant's own projections, included
17 in the AFC, indicate that recycled water will be
18 available beginning 2005. At this date the
19 earliest the project could come into operation
20 would be 2005, and I don't know that that's
21 actually going to be attained.

22 CHAIRMAN KEESE: Is there a minimum
23 amount that you would think would trigger delivery
24 to the plant? I mean, would the district have to
25 have a minimum amount of water before they could

1 start making the deliveries?

2 MS. DeCARLO: I'm not sure about that,
3 but Mr. Paul Sensibaugh should be able to comment
4 on that.

5 CHAIRMAN KEESE: Thank you.

6 MS. DeCARLO: I don't believe that
7 there's any physical reason there would need to be
8 a minimum amount. And the record doesn't show
9 that there has to be a certain amount before
10 delivery can take place. The only requirement is
11 the pipeline construction.

12 CHAIRMAN KEESE: Okay. I do believe
13 that Byron Bethany had indicted that there was an
14 economic minimum before they would want to get
15 involved.

16 MS. WHITE: Commissioner, I think the
17 main issue that we had looked at in terms of
18 assuring that the project could use what recycled
19 water is produced by Mountain House Community
20 Services District is the actual conveyance
21 structure. As you know, the AFC included a
22 pipeline that would convey recycled water from the
23 Mountain House Community Services District
24 facilities to the power plant, which staff
25 analyzed. We even analyzed some of the

1 alternatives associated with it.

2 We've heard from TriMark that easements
3 could be made available to ensure that that
4 pipeline could be constructed. There is noted
5 hesitation on the part of the Applicant to be
6 restricted to having to build that portion of
7 their proposed project, or ensure that it is built
8 by a certain time, because based on the
9 projections that not only have been supplied by
10 the Applicant but verified by Mountain House
11 Community Services District, there will be a
12 certain amount of water available as early as
13 2005.

14 Consistent with assuming that the
15 project, if you license it this summer, is
16 constructed within the timeframe that the
17 Applicant proposes, they could use the water in
18 2005 that's produced by Mountain House, assuming
19 that infrastructure is, in fact, put in place.
20 And one of the reasons why we have tried to craft
21 our conditions consistent with what the
22 Applicant's proposing. As part of the AFC, they
23 have proposed certain amounts of water being
24 available on a schedule, even assuming some use by
25 Mountain House. So that's where those numbers in

1 Condition 5 come from. Actually, from the
2 Applicant's own materials, and the idea of the
3 pipeline along the route specified in the AFC.

4 So the biggest impediment that we found
5 in all of our analysis was assuring that that
6 infrastructure actually get in place. Because of
7 this noted alignment of the parties to make sure
8 that the Applicant, in fact, uses what water is
9 produced.

10 So if the infrastructure is there, and
11 the housing development goes as planned, then, in
12 fact, you could get this water being used by the
13 power plant. If, in fact, things don't go as
14 planned, there are caveats in the condition that
15 give flexibility to the Applicant to come forward
16 to the Commission and make changes.

17 CHAIRMAN KEESE: Thank you.

18 MR. GARCIA: I have a question, Mr.
19 Chairman.

20 CHAIRMAN KEESE: Mr. Garcia.

21 MR. GARCIA: One of the things I'm
22 struggling with on this particular issue of water
23 is, you know, the Chairman's admonition that, you
24 know, we don't want to tie the Applicant's hands
25 in the negotiating process for this recycled

1 water. And it just seems to me that if the
2 Applicant were to be required to put in that
3 pipeline prior to having executed an agreement for
4 the water, that puts them in a very difficult
5 negotiating position.

6 I mean, what if it turns out that they
7 can't make a deal with BBID, and they wind up
8 negotiating successfully with, say, Tracy. That
9 facility would then be sunk and of little value to
10 the project. And, you know, I don't see a way
11 around those two particular issues.

12 MS. DeCARLO: Well, just to point out
13 the timeline requirements, the pipeline won't be
14 required to be put in place until prior to start
15 of operation. At that point, it would be
16 anticipated that the project Applicant have some
17 sort of agreement regarding its water supply. As
18 it currently stands, the PMPD requires that that
19 agreement take place prior to the start of
20 construction.

21 MR. GARCIA: Okay. But then, let's say
22 that they in fact negotiate successfully with
23 Tracy. They would still have the requirement to
24 build the pipeline. So what, what would be the
25 purpose of having a pipeline that goes nowhere?

1 MS. DeCARLO: Well, they could come back
2 and ask for amendment to that, to Soil and Water
3 6. Or, I'm sorry, to the condition requiring the
4 pipeline to the Mountain House Community Services.
5 However, as the record stands now, it's unlikely
6 at this point that they would enter into such an
7 agreement. They've submitted evidence of their
8 opinion that the best source of recycled water
9 would be Mountain House Community Services
10 District, and it may be financially infeasible to
11 obtain recycled water elsewhere.

12 Staff is not of that opinion, however.
13 That is the submitted opinion of the Applicant at
14 this point.

15 MS. WHITE: If I may also add a point
16 here. Throughout this entire proceeding we've had
17 many discussions with both BBID and Mountain
18 House. Neither entity has suggested that they
19 would not be willing to enter into that kind of an
20 agreement. Now, the details of the agreement,
21 there are some concerns about those.

22 In terms of Mountain House, the entities
23 that would actually produce it, they have no
24 problem in any of the information they have
25 provided to us, or any of the, in terms of

1 TriMark, any of the comments that they put forward
2 here, that they would make 100 percent of the
3 water available. They have already prescribed
4 that there is nothing in the record that would
5 suggest after they got a decision, that everything
6 would fall apart. There is quite a bit of
7 incentives that have been noted by Chairman Keese
8 that Mountain House find a customer for this
9 recycled water.

10 The feasibility study done by BBID
11 suggests that not only is it a good idea to
12 develop recycled water in their community, but
13 they specifically identify East Altamont as the
14 primary customer they want to target, and had
15 noted several reasons why they wouldn't want to go
16 with agricultural customers or residential
17 customers to serve recycled water to.

18 Now, if, in fact, there is a very
19 unlikely conflict between the parties, and right
20 now I can't imagine what that conflict would be,
21 but in the unlikely event that that occurs, and
22 Calpine, prior to start of construction, has to
23 come back to the Commission with an alternate plan
24 for their water supply that meets the water
25 conservation that we have laid out in our

1 proposal, then, of course, you'd have to address
2 Condition 6.

3 But there's no evidence to date,
4 particularly in light of the recent resolution by
5 the board, that would suggest that these parties,
6 in fact, are unwilling or have no incentive to
7 make this happen.

8 MR. GARCIA: Let me respond to that.
9 Because, again, I'm concerned about the
10 negotiating scenario where one party winds up, as
11 a result of these conditions, winds up having an
12 inordinate bargaining power, and that if you
13 require this and the project can't go forward with
14 that, while all of the parties may be willing to
15 enter into an agreement the impact of something
16 like that is an impact on the price that the
17 project is going to wind up having to pay for the
18 commodity.

19 And that's part of the concern that, you
20 know, some of us have with this.

21 MS. WHITE: Two points I'd like to make
22 here.

23 The first is staff is recommending this
24 condition to address potential impacts that we
25 find are significant, related to the raw water

1 supply. We also are addressing what we see as an
2 obligation of this Committee in implementing LORS,
3 to have a project when recycled water is
4 available, use it for cooling instead of high
5 quality raw water. And that anything else would
6 be considered a waste of that high quality water.

7 Now, the second point I'd like to make
8 is as a result of having worked on several other
9 siting cases where we not only specify mitigation
10 but what we think a project has to do to stay in
11 compliance with LORS, there have been provisions
12 and conditions imposed on other projects related
13 not only to their quantities of water, but the
14 sources and the suppliers, back-up as well as
15 primary supply. And these projects have gone
16 forward.

17 Now, if as part of doing business in a
18 community and mitigating a project's impacts, you
19 have certain conditions imposed upon you, then
20 you'll have to deal with complying with those
21 conditions and the consequences of that. And
22 we've seen that in several other cases.

23 Now, the incentives that these parties,
24 particularly Mountain House, to find users of
25 their recycled water is one thing to consider.

1 The other thing to consider is what the Recycled
2 Water Act requires, is that this water, in fact,
3 is served at a cost less expensive than the other
4 water. And so right there, there is some equity
5 that's going to be coming out of these
6 negotiations. And the state finds that it is
7 important to find uses for these resources, this
8 recycled water resource, and one of the things
9 that they're offering as a carrot is to make sure
10 that it's cheaper.

11 So I really don't think that at this
12 point in time the overall cost of the water for
13 the life of the project is going to be in
14 violation of those state statutory requirements.
15 It certainly wouldn't fly. I mean, the Applicant
16 could cry foul, definitely, and win.

17 In terms of the cost of the pipeline,
18 it's a very short pipeline. They could control
19 the cost because they're the ones building it.

20 CHAIRMAN KEESE: Let me, do you believe
21 that your requirement that they must have a first
22 priority, that the contract must give them first
23 priority, is that -- you don't think that limits
24 the negotiating position here?

25 MS. WHITE: In terms of any other

1 available supplier --

2 CHAIRMAN KEESE: So Mountain House can't
3 use it for a golf course. They must, the
4 Applicant must negotiate first priority versus any
5 other use that Mountain House might have.

6 MS. WHITE: Staff's position in terms of
7 using this water for industrial cooling purposes
8 versus application on any land is related to the
9 potential environmental impact. As you realize,
10 recycled water is not as high quality as the raw
11 water. And when we were doing our analysis, we
12 found that there, as a result of the higher TDS
13 concentrations, albeit this is very good recycled
14 water based on projections, there was a potential
15 that that could have an impact. And we were in
16 agreement with the feasibility study that BBID put
17 forward, that said that it would be better for it
18 to be used for industrial purposes than on land
19 applications.

20 Now, there are no other --

21 CHAIRMAN KEESE: I, I agree with that,
22 but, I mean --

23 MS. DeCARLO: I can address your concern
24 here. The actual condition requires that the
25 identification of first priority be between the

1 Applicant and BBID, not between BBID and Mountain
2 House Community Services District. So the intent
3 is that the Applicant be given first priority over
4 the dispersal of the recycled water from BBID.

5 CHAIRMAN KEESE: But BBID does handle
6 all the Mountain House recycled water. So --

7 MS. WHITE: Perhaps we'll have Mountain
8 House Community Services District address that.

9 HEARING OFFICER WILLIAMS: Let me ask a
10 question also.

11 MS. WHITE: This is where some of that
12 dispute has --

13 HEARING OFFICER WILLIAMS: Are the other
14 potential, what other potential providers of
15 recycled water are within BBID's service area?

16 MS. WHITE: None, to our knowledge.
17 That's one of the reasons why we found an
18 impediment to Tracy, because they're outside of
19 BBID's service territory. Mountain House is
20 within BBID's service territory, and one of the
21 reasons why it's a logical first shot.

22 HEARING OFFICER WILLIAMS: Are there
23 legal impediments to a provider of recycled water
24 outside of BBID's service area providing recycled
25 water to the EAEC facility?

1 MS. WHITE: I wouldn't call them
2 impediments. I would just, I would characterize
3 them as additional approvals and agreements you
4 would have to go through that don't exist for
5 getting recycled water within the district.

6 HEARING OFFICER WILLIAMS: Would that
7 increase the cost, these additional impediments?

8 MS. WHITE: I don't, I don't know.

9 CHAIRMAN KEESE: I think this would be a
10 good time to hear from Mountain House. Is that
11 all right?

12 MS. DeCARLO: Yeah.

13 CHAIRMAN KEESE: Can we hear from
14 Mountain House, please. You've heard some of the
15 questions that we've had here, so if you could
16 help us by addressing them, that would be
17 appreciated.

18 MR. SENSIBAUGH: Okay, I can try to do
19 that.

20 CHAIRMAN KEESE: Identify yourself.

21 MR. SENSIBAUGH: First, I'd like to
22 address the issue of --

23 CHAIRMAN KEESE: Would you identify both
24 of you for the record?

25 MR. SENSIBAUGH: I'm sorry, yes. I'm

1 Paul Sensibaugh, the General Manager for the
2 Mountain House Community Services District.

3 MR. GRINSMAN: Duane Grinsman, General
4 Manger with TriMark Communities.

5 CHAIRMAN KEESE: Thank you.

6 MR. SENSIBAUGH: Thank you. I'd like to
7 first address the issue brought up about a
8 potential political obstacle.

9 The Board of Directors for the Mountain
10 House Community Services District last Tuesday did
11 pass a resolution in support of recycling water to
12 the EAEC. There is a sensitivity that the board
13 is aware of, that our Board of Supervisors is also
14 our Board of Directors. Our Board of Supervisors,
15 because of air pollution issues and some other
16 issues, has taken a position against this project.

17 However, they realize that if, in fact,
18 this project is permitted, that they are in full
19 support of recycled water to the plant, and so
20 stated in the resolution last Tuesday. They
21 stated that they feel that it is the highest and
22 best use of our recycled water, and it also
23 indicated that they realize that in order to do
24 that, that we have to enter into an agreement with
25 BBID and/or Calpine. So the idea of a tri-party

1 agreement could be on the table as well. We're
2 not objecting to that at all.

3 We just want to make sure that this
4 project, in fact, is permitted before we go
5 through any point in negotiations and not put them
6 in a sensitive position.

7 With respect to the use of our water,
8 BBID does not control the use of our recycled
9 water. What they purport to control is the
10 conveyance or purveyance of water within their
11 district and outside the boundaries of Mountain
12 House. We are willing to commit, if in fact that
13 this is permitted, we would commit 100 percent of
14 recycled water first to Calpine. We did not
15 address, the board did not address recycled water
16 to anybody else, including BBID. What they did
17 support was recycled water to the Calpine project.

18 Any use that we wanted to do within the
19 community, we do not need anybody else's
20 permission to do that.

21 I think, and this is the other question
22 that I missed that pretty much I think answers the
23 main questions, but --

24 CHAIRMAN KEESE: I guess I would -- what
25 would your feeling be about giving the Applicant a

1 first priority?

2 MR. SENSIBAUGH: First priority to our
3 recycled water?

4 CHAIRMAN KEESE: To any recycled water.

5 MR. SENSIBAUGH: I have no problem with
6 that.

7 CHAIRMAN KEESE: Okay. The other
8 question was one of timing. Is there, I guess
9 you're hopeful that people will be moving in
10 shortly. At what point will you have something
11 that could function and deliver water?

12 MR. SENSIBAUGH: Let me first address
13 that, and then I'll let Mr. Grinsman also address
14 that question.

15 When we put out projections of what our
16 water effluent would be with respect to amounts,
17 and we knew what Calpine was predicting their
18 needs would be, we felt very comfortable at the
19 time and took a pretty conservative approach that
20 we want to make sure that we can deliver, let's
21 not exaggerate what we have.

22 What has happened is very good for
23 Calpine, because all of a sudden we're going like
24 dynamite. It's just overwhelming our staff, I
25 know, that the growth is happening much, much

1 faster than we predicted, so that means that we're
2 going to have much more effluent on an earlier
3 time period than we originally had predicted. So
4 I, I don't see that there's any problem with that.

5 And with respect to the ability to
6 convey that, once a trunk line is to our boundary
7 it's really a matter of us switching off one valve
8 and turn on another valve. We'll be ready, and
9 we'll have more water than they need at the early
10 stages, we predict.

11 CHAIRMAN KEESE: And by the, if we give
12 two years, let's say two years from summer, say,
13 let's just pick July of 2005, you would have an
14 amount of water that could be put in this pipeline
15 to be received by the center economically?

16 MR. SENSIBAUGH: We will have, and I
17 don't know what that amount is right now. We, in
18 fact, are treating water, so to speak, right now,
19 even though there's no people flushing, if you
20 will, at the moment. But through the testing of
21 our water treatment plant, we've run everything
22 through our wastewater plant, and by the time
23 summer comes we'll have, you know, several homes,
24 and by the end of the year we could have a couple
25 hundred. Next year is going to be more. I'll let

1 Mr. Grinsman speak to that.

2 Within two years, we'll easily have
3 water that can be economically conveyed over to
4 Calpine.

5 CHAIRMAN KEESE: Thank you. And I'll
6 ask you to do me one little favor, too, because I
7 did note that we have references to that Mountain
8 House will be built out in 2020, 2024, and
9 sometime between 2020 and 2050. So we have three
10 different references in our document here as to
11 when Mountain House is going to be built out.

12 Can you tell us which one's the closest,
13 just at this time?

14 MR. GRINSMAN: I won't begin to
15 guarantee when Mountain House will be built out.
16 But I think the confusion is caused from some
17 studies that were done about eight, nine years
18 ago. When we were, when San Joaquin County was
19 studying Mountain House they wanted to look at the
20 fiscal impacts on the county, and they studied two
21 scenarios, a faster growth scenario that was a
22 build-out in 20 years, and a slower growth
23 scenario that was a build-out in 40 years.

24 In regards to absorptions, we've been
25 operating on a 15 to 20 year build-out. Most

1 likely 20 years. We have currently 20 model homes
2 under construction. The first model home is
3 projected to be open March 15th. The grand
4 opening for all 20 model homes is April 7th. Our
5 builder, and take this for what it's worth, has
6 told us that they expect their absorptions to go
7 significantly faster than they had originally
8 anticipated. They project to sell all 1,000 homes
9 by the end of this year. Now, they won't have
10 them all built, but they will be sold. And they
11 will be finished next year.

12 So our absorption rate looks like it's
13 going to be almost twice what we had originally
14 anticipated on our first neighborhood. The first
15 neighborhood also includes a school, some
16 industrial and office properties, apartments, a
17 church site. So by 2005, we should have a pretty
18 significant amount of wastewater, effluent to
19 provide to the Calpine facility.

20 This summer we will have, as Mr.
21 Sensibaugh said, our first move-ins in late May,
22 and then it's just going to go like a snowball
23 from there.

24 I might mention also that there is no
25 requirement that we put this effluent on a golf

1 course or parks, or what have you, in the
2 community. That's a misconception about our
3 discharge permits. The regional board has told us
4 that if we were to -- that putting it on a golf
5 course is a reasonable approach, but if we had
6 another alternative, such as putting the water in
7 a cooling tower, that that would be viewed as a
8 higher and better environmental use than putting
9 it on a golf course for, the reason is that you
10 run the potential of groundwater degradation if
11 you put it on the golf course. We've been told we
12 would be heroes if we were able to strike an
13 agreement to put it in the cooling tower.

14 I think that there is, I think that our
15 ability to be difficult in a negotiation is
16 somewhat checked. We have tremendous incentives
17 to work with Calpine and BBID in coming up with an
18 agreement for the provision of our effluent to
19 their facility. We feel that the language that
20 staff has drafted provides some outs, if you will,
21 by visiting with the CPM and working out other
22 solutions if we were to be difficult.

23 The reason that we, it's not in our best
24 interest to be difficult, is that we have a permit
25 to discharge our water into the delta. We know

1 that over time the regulations for discharge will
2 become tighter and tighter, which means higher
3 capital costs for us at our wastewater treatment
4 plant. Higher degrees of filtration,
5 microfiltration, nanofiltration, and possibly,
6 worst case scenario over time, reverse osmosis, to
7 meet the discharge requirements. These are
8 expensive capital improvements.

9 And so there's quite a bit of incentive
10 for us to be reasonable throughout a negotiation.
11 And assuming this project were to be permitted,
12 it's our intent to proceed post haste with
13 negotiating an agreement that would be subject to
14 them obtaining their financing and building the
15 plant. If they weren't able to get financing,
16 then the agreement is moot.

17 We notice in the comments from Calpine
18 and BBID that it's too early to enter into an
19 agreement, it's too early to determine the
20 technical specifications for a pipeline and a
21 pump. I would submit to you that we were in this
22 very same position ten years ago, and we entered
23 into an agreement to provide raw water to the
24 community a longer distance, ten years before we
25 turned a shovelful of dirt. We determined the

1 technical requirements for the pump, for a pump
2 station much larger than what would be required
3 here, and a 30 inch pipeline that went about three
4 miles. And we did that three years before we,
5 again turned a shovelful of dirt and before we had
6 a water treatment facility.

7 We did it then, we can do it now.

8 CHAIRMAN KEESE: Thank you. And you're
9 disposing it now, is that what --

10 MR. GRINSMAN: No. Right now we're, on
11 an interim basis, we're going to be putting it on
12 some farmland that we own immediately north of our
13 wastewater treatment plant. Our permit requires
14 that we generate a certain volume of wastewater
15 tested to make sure it complies with Title 22
16 requirements, and then it's going into the river.

17 CHAIRMAN KEESE: Okay. And that would
18 be about when?

19 MR. GRINSMAN: It'll be approximately
20 next summer, not this coming summer but a year
21 later.

22 CHAIRMAN KEESE: Okay.

23 Anything else to add here? Do we have
24 any questions?

25 MR. GRINSMAN: I just wanted to say that

1 TriMark Communities is a master developer, is 100
2 percent unified with the CSD. There's a variety
3 of agreements between us and the CSD that this is
4 the CSD's water, but there's a variety of
5 agreements that allow us to be heavily involved
6 and to determine where this water will go.

7 That's all moot, because we're unified,
8 and we'd like to see this go to Calpine.

9 CHAIRMAN KEESE: Yes, and you're right,
10 because it's very difficult for us to characterize
11 exactly who's in control here. Understanding that
12 you have these abilities to implement and suggest,
13 and starting with TriMark and moving to the
14 district, and moving to BBID.

15 HEARING OFFICER WILLIAMS: Is TriMark
16 willing to submit some kind of a protocol that
17 would suggest what you've provided here today in
18 terms of your commitment to provide recycled water
19 to Calpine? I understand that Mountain House has
20 already done that in the form of a board
21 resolution, I guess. But is TriMark willing to
22 set forth in writing some type of protocol that
23 would ease the fears of the Applicant with respect
24 to its negotiating position?

25 MR. GRINSMAN: Just for clarification,

1 do you mean some proposed deal terms?

2 HEARING OFFICER WILLIAMS: Yes.

3 MR. GRINSMAN: I would have no problem
4 with that. Technically, this is the CSD's water,
5 but I certainly wouldn't have a problem writing a
6 letter stating what --

7 HEARING OFFICER WILLIAMS: So I take it
8 that your comment is that TriMark would endorse
9 the resolution that the board --

10 MR. GRINSMAN: Yes, sir.

11 HEARING OFFICER WILLIAMS: -- has
12 passed.

13 MR. GRINSMAN: And certainly we would be
14 willing to put that in writing, that we're 100
15 percent committed to providing 100 percent of the
16 wastewater. That we're in agreement that 100
17 percent of the wastewater generated by the CSD's
18 wastewater treatment plant should go to the
19 Calpine plant, if permitted.

20 HEARING OFFICER WILLIAMS: At a
21 reasonable cost.

22 MR. GRINSMAN: At a reasonable cost.
23 You bet.

24 CHAIRMAN KEESE: Thank you.

25 MR. KESSLER: Mr. Chairman, if I can

1 just touch on --

2 CHAIRMAN KEESE: Yes. Yes, we will,
3 this was a diversion from staff, so we will come
4 back to staff.

5 MR. KESSLER: I'm not bargaining for my
6 equal time here, so I'll try to keep this short.

7 But Mr. Williams asked a couple of
8 questions about the alternatives to recycled water
9 supply, and if I can just summarize what our
10 findings were. There are only two sources that
11 could provide ultimately the fresh, or the 100
12 percent of the, meeting East Altamont's average
13 annual demand of 4,616 acre/feet per year. And
14 those were the Mountain House supply, eventually
15 by 2018 or sooner, or the city of Tracy's supply.

16 We also considered a supply from
17 Discovery Bay, which was only going to meet on the
18 order of a couple thousand acre/feet per year
19 ultimately. That's in the current projections.

20 So when we looked at all the provisions
21 that the Water Code sets out for tests of recycled
22 versus their freshwater source, which include its
23 water quality, adequacy of supply, the adverse
24 effects to downstream, downstream water users'
25 water rights, degradation to water quality,

1 potential injury to plant life, fish and wildlife,
2 and cost, the two alternatives that could
3 ultimately provide full supply to meet average
4 annual demands to East Altamont were only Mountain
5 House and the city of Tracy.

6 The other factor that separated those
7 was the present value of cost of implementing
8 those water supplies. And they differ on the
9 order of \$84 million is the present value of the
10 cost of water supply over the entire life of the
11 project, 30 years; \$84 million for Mountain House
12 and \$93 million for city of Tracy. So that's why
13 Mountain House looks, its prospects look most
14 favorable.

15 HEARING OFFICE WILLIAMS: Well, let me
16 ask you this. But the provision of recycled water
17 from the city of Tracy, did the cost estimates
18 take into consideration compensation to BBID?
19 Because as I understand it, Tracy is outside of
20 BBID's service area.

21 MR. KESSLER: That's our understanding,
22 too. And that would have to be built in to the
23 rates. What city of Tracy has provided us is a
24 letter saying that they would be, the Public Works
25 Department would be willing to recommend to its

1 city council that they supply the water at no
2 cost, but the infrastructure would be a cost that
3 would be, have to be borne by the Applicant. And
4 so there would be, as could be expected, some
5 mark-up for the sake of BBID having to handle that
6 water.

7 The other gap that we're trying to
8 bridge here is understanding what if BBID chooses
9 not to supply recycled water. And staff's
10 position is, and this can be argued legally, is
11 that should BBID choose not to, but another entity
12 is willing to at the time of serving that
13 applicant, that that supply could be, that
14 arrangement could be done directly. And I know
15 that Mr. Gilmore disagrees with that. He's
16 written letters to that effect.

17 But that is, that is the position that
18 we believe, should they choose not to engage in
19 that, and there's another willing supplier, that
20 that could be a viable resources to the project.

21 The other issue I want to just touch on
22 is the what-if. We've looked at this as a risk to
23 the Applicant and to BBID, in terms of how this
24 project would develop, or what kind of bargaining
25 position they could be led to, or that they could

1 be somehow, you know, less, or distorted
2 bargaining position I think is the word that was
3 used.

4 The Commission has also, has to
5 recognize its risk. If it chooses to implement
6 the language that the Applicant has proposed on
7 these COCs, which leave it to the discretion of
8 BBID, as made available by BBID is the phrase,
9 that leaves full discretion to that water district
10 to decide whether it wants to begin and ever
11 implement recycled water supply to this power
12 plant.

13 CHAIRMAN KEESE: But you do admit that
14 they have to get rid of their recycled water.
15 They're under a --

16 MS. WHITE: Well, actually, BBID would
17 be the retailer.

18 CHAIRMAN KEESE: Right.

19 MS. WHITE: And Mountain House is the
20 wholesaler.

21 CHAIRMAN KEESE: And Mountain House has
22 got to get rid of it.

23 MS. WHITE: But if they, if BBID chooses
24 not to accept what Mountain House --

25 CHAIRMAN KEESE: Is that a realistic, I

1 mean are we talking in the area of reality here?

2 MS. WHITE: Well, if we're talking about
3 hypotheticals, you might want to look at the
4 incentives that exist BBID related to maximizing
5 their revenue income. If you look at raw water,
6 the information they gave us is that they could
7 sell raw water at \$110 an acre/foot. But to sell
8 recycled water would be at some amount less than
9 that. And if you have --

10 CHAIRMAN KEESE: So they have an
11 incentive to sell --

12 MS. WHITE: As much raw water as they
13 can, over recycled water.

14 CHAIRMAN KEESE: Well, they also have
15 incentive to use as much recycled water so they
16 have excess raw water to sell somewhere else, too.

17 MS. WHITE: Well, right now, look at
18 their customer base. And if you're looking at
19 what the customer base is today, then the
20 incentive would be to maximize revenues with your
21 resources available today. So you take the higher
22 priced water and that's what you sell. Because
23 they don't have to. If BBID chose not to make it
24 available to EAEC, then EAEC would still pay for
25 what was made available to them.

1 CHAIRMAN KEESE: So there's an --

2 MS. WHITE: If we're going to go through
3 these hypotheticals, then you want to consider all
4 of them.

5 CHAIRMAN KEESE: Okay. All right. Let
6 me, can I --

7 MS. WHITE: And so what we were focused
8 on is rather than getting into that whole
9 discussion, focus on what would, in fact, be an
10 appropriate condition that would assure the use of
11 the maximum amount of recycled water produced by
12 Mountain House, and, in fact, conserve as much
13 high quality raw water, freshwater, as possible,
14 for the better and higher uses that don't have
15 alternatives, like an industrial cooling facility
16 does.

17 You and I drinking --

18 CHAIRMAN KEESE: I think that's, I think
19 that's all our goal.

20 MS. WHITE: Yeah. And so --

21 CHAIRMAN KEESE: Can I ask one specific
22 question. One of the conditions is that they,
23 that the Applicant would build a 10 million gallon
24 storage facility. Is that, am I accurate?

25 MS. WHITE: I think we -- what we're

1 doing is --

2 CHAIRMAN KEESE: Is that in the --

3 MS. WHITE: No, we're requiring them to
4 build what they proposed.

5 MR. KESSLER: That was an earlier
6 version.

7 (Parties speaking simultaneously.)

8 MS. WHITE: Yeah. We're not --

9 MR. KESSLER: That's no longer --

10 CHAIRMAN KEESE: That's no longer --
11 yeah, because --

12 MS. WHITE: No, we're just, the way the
13 conditions are written --

14 CHAIRMAN KEESE: -- I didn't recall
15 that, and I --

16 MR. KESSLER: The way the FSA reads now
17 is it's our recommendation, but it's not built
18 into the conditions.

19 MS. WHITE: Right.

20 CHAIRMAN KEESE: Okay. Thank you.

21 I think we have another agency that
22 would like to speak.

23 MR. GILMORE: Thank you, Chairman Keese.
24 Rick Gilmore, General Manager, Byron Bethany
25 Irrigation District. I just have some brief

1 comments, and I don't care to comment on the
2 hypotheticals that Ms. White mentioned earlier, a
3 moment or two ago, because we'd probably be here
4 for awhile.

5 We agree with the CSD's Board of
6 Directors' resolution, which was adopted last
7 Tuesday at their board meeting, that the
8 appropriate agreements be executed after the
9 Applicant's project has commenced operation. I
10 believe that's, that statement, the resolution is
11 contradictory to what's in the PMPD, whereby the
12 Committee is requesting that this agreement be
13 negotiated prior to operation. So we agree with
14 the CSD on that.

15 Also, BBID supports the principle that
16 the appropriate agreements be negotiated with the
17 Mountain House Community Services District, and
18 that those agreements should be negotiated freely,
19 in good faith and in a manner at such time as best
20 serves the mutual interests of both Byron Bethany
21 and Mountain House. And that those such
22 agreements should not be subject to any
23 restrictions imposed by the State of California,
24 the Applicant, or TriMark Communities, for that
25 matter, regarding the timing and the forming of

1 content of these such agreements.

2 And with that in mind, Mr. Chairman,
3 last Tuesday the district encouraged, BBID
4 encouraged the Mountain House Community Services
5 District board to direct their general manager,
6 Mr. Sensibaugh, to immediately commence
7 discussions with BBID for the purpose of entering
8 into an MOU that describes, among other matters,
9 the role of each entity in the future supply of
10 recycled water to East Altamont, which would then
11 lead to a more detailed recycled water services
12 agreement between both districts.

13 We're discussing process here. We took
14 the opportunity last Tuesday to bring that up as a
15 process on our end, as two public agencies,
16 managing our water resources, trying to come up
17 with a water supply for a BBID, potential BBID
18 customer. That was the process that we thought
19 would work out. There was no comment made by the
20 board regarding that MOU. We'll probably bring
21 that up in writing to the CSD at some later point
22 to begin those discussions, which we think are
23 worthwhile, and we should begin that process.
24 Regardless of what happens here with the
25 conditions, you know, we feel that we all know

1 that we have to have an agreement with the CSD.

2 The CSD and BBID agree that it's
3 premature to enter into a definitive agreement at
4 this time, so we would like to lay out the
5 framework for a water supply agreement.

6 CHAIRMAN KEESE: Two questions. You do
7 have an MOU with the Applicant?

8 MR. GILMORE: Yes, we do. We do have an
9 MOU with the Applicant regarding the use of
10 recycled water. And as you're aware, we also, I
11 think it's an exhibit, or an attachment to that,
12 we also identified that the district adopt this
13 recycled water policies.

14 CHAIRMAN KEESE: Okay. The, your
15 indication was that the -- since I have you in --
16 go back to the district. The question is,
17 operation of the plant, or construction,
18 significant construction of the plant. I mean,
19 are you suggesting that you, that if the Applicant
20 starts construction on their plant, that you would
21 want to wait for operation before you sign the
22 deal?

23 MR. GILMORE: Well, basically, I mean,
24 our thinking is consistent with the CSD, where
25 they said once that the plant commenced operation

1 we would then negotiate a definitive water supply
2 agreement for recycled water. That way, once the
3 project was in operation we would then know, we
4 would probably have a better handle on amounts of
5 recycled water, and so forth.

6 MR. SENSIBAUGH: I would like to
7 clarify.

8 CHAIRMAN KEESE: All right. I'm going
9 to raise, I'll raise the issue, because one of the
10 things that have been referred to here before is
11 that in the AFC, before the project was
12 operational we were going to have a pipe before it
13 was operational. That is, we have a difference of
14 opinion here now as to who and when we should
15 mandate that that take place.

16 I would think, if you have the pipe
17 before operation, that's part of the negotiation
18 that takes place here. So with that, can we hear
19 from the district?

20 MR. SENSIBAUGH: Sure. I would really
21 like to clarify that, and I do understand Mr.
22 Gilmore reading verbatim from our resolution, but
23 since I helped craft that resolution I think I
24 know the intent very well.

25 Our board of directors talked about

1 construction and operation because they want to
2 make sure this is a real project. Once this
3 project is permitted, that's when we were willing
4 to start bringing to our board the terms of any
5 type of agreements that we need to convey the
6 water. It doesn't make sense to build a pipeline
7 and then start negotiating. You know, we're not
8 going to do things backwards.

9 Our board very well knows how
10 infrastructure projects are done, and we will
11 follow those normal procedures, and those things
12 won't be obstacles. We'll do this in the normal
13 logical manner that we always do. We just want to
14 make sure it's permitted and it really is a real
15 project, and we will comply in a timely manner and
16 in a sequence manner so that somebody doesn't try
17 to get out of sequence.

18 So that's what we'll be recommending, I
19 will be recommending to the board when we go back
20 to them for these agreements.

21 CHAIRMAN KEESE: Thank you. And I
22 would, that, yeah, we have no problem with that.
23 Thank you.

24 Applicant.

25 MR. WHEATLAND: I'd just like to comment

1 on that last point by Mr. Sensibaugh. And I am
2 glad that he's here finally, after 18 months, that
3 his board has finally allowed him to come to this
4 proceeding, because we could have used his
5 participation all along.

6 But what he just told you was not what's
7 in the resolution. And it's not what was in his
8 staff report. The resolution says, therefore, be
9 it resolved, that in the event that the proposed
10 EAEC is licensed for operation by the CEC, and is
11 constructed and commences operation, the board of
12 directors hereby supports the concept of the
13 Mountain House Community Services District
14 supplying all of its treated water.

15 And the thing I want to stress is Mr.
16 Sensibaugh didn't make clear is that his board
17 directed him to come tell you today that this
18 resolution does not revoke their previous
19 resolution of opposition.

20 CHAIRMAN KEESE: Of the board of
21 supervisors.

22 MR. WHEATLAND: Of the board of
23 supervisors.

24 CHAIRMAN KEESE: Right. But it's a
25 different body. I, you know.

1 MR. WHEATLAND: No, it's actually the
2 same. It's the same body.

3 CHAIRMAN KEESE: Do you care to respond?

4 MR. SENSIBAUGH: I want to assure you
5 that our board will do things in the logical,
6 reasonable manner. When the -- the language
7 that's in there indicates that they want to make
8 this, are sure that this is a real project, it
9 does not say that we won't start negotiating right
10 after this permit is given. It does not address
11 that at all. That was not the intent of the
12 resolution. And I am here to make sure you don't
13 misconstrue what that resolution is, or actions
14 between our board of directors and our board of
15 supervisors.

16 CHAIRMAN KEESE: Thank you.

17 All right. We have been very informal
18 on this issue so far. Mr. Garcia, are you -- all
19 right. Why don't we hear from Mr. Sarvey. Any
20 comments?

21 MR. SARVEY: Well, I just first want to
22 dispel a couple things about the city of Tracy
23 providing recycled water to this project.

24 Our city council has just signed a
25 resolution in the last month to commit to

1 providing recycled water to the Tesla Power
2 Project, so right at the moment we're sort of
3 contractually obligated there.

4 As far as the Tracy Hills project never
5 providing water to this particular facility, the
6 Tracy Hills project is pretty much hung up under
7 Measure A right now, and they won't be building
8 anything for at least five to six years, which is
9 not going to help the East Altamont Energy Center
10 in any way, shape, or form.

11 The most important thing to remember in
12 all types of transactions is that we're all in
13 here for profit. Most of us, anyway. But if you
14 don't require that this recycled pipeline be
15 built, and you don't require that all recycled
16 water from Mountain House Community Services
17 District is used in this facility, the profit
18 motive will determine what is used and where it is
19 used.

20 So that's all my statement on the whole
21 thing. Thank you.

22 CHAIRMAN KEESE: Thank you.

23 CARE have anything to say on this issue?

24 All right. Applicant with the final.

25 MR. WHEATLAND: And I'll be brief.

1 Ms. White made a statement that wasn't
2 true, but really sums up the core of this
3 argument. She stated that in our Application for
4 Certification we had proposed a schedule for the
5 use of recycled water. That's not the case.

6 What we did in our Application for
7 Certification is provide BBID's forecast of when
8 that water might be available, based upon what
9 they had heard from TriMark and Mountain House.
10 And what we are suggesting to the Committee is
11 that there are some real difficulties in taking
12 what has been a forecast of availability and
13 turning it into an actual schedule, or
14 prescriptive requirement.

15 And I was very glad today that Mr.
16 Grinsman has said that he is not really prepared
17 here to guarantee any particular volume of water
18 at any particular date, and this goes to the very
19 beginning of my comments about the difficulty of
20 obtaining financing without such guarantee.

21 The other thing I wanted just to address
22 real briefly was a statement that Mr. Grinsman
23 made. If I heard him correctly, he said that
24 there is no requirement that there be any land
25 application of their recycled water. But he

1 corrected himself a few minutes later and said
2 that indeed, that is exactly what they're going to
3 be doing with their water.

4 He characterized it as an interim basis,
5 but I don't believe that he has any approval by
6 the Regional Water Quality Control Board for
7 anything other than land applications or re-use,
8 unless he goes back to the board and asks for such
9 consent.

10 There was also some discussion about the
11 question of whether there would be environmental
12 damage for land application such as golf courses,
13 landscaping, uses on public property within the
14 Mountain House District. And I want to be real
15 clear that while there are some opinions at the
16 table here today about that, there's nothing in
17 the record as to that damage by the Regional Water
18 Quality Control Board. And, in fact, it is an
19 approved use within the Mountain House and,
20 indeed, throughout California.

21 So I think in summary, we've had a very
22 good discussion here today about the various
23 issue. But I still believe that the Applicant is
24 correct in putting forth proposed conditions that
25 track exactly the guidance that the Committee gave

1 during the informational hearings, ones that will
2 ensure that we will use all the water that's
3 available, that is made available by BBID, but not
4 water that would be forced upon us by conditions
5 that would require us to take it prematurely.

6 BBID, by the way, is going to be
7 negotiating recycled water not just for us, but
8 for all of its customers. Because even in the
9 best scenario, where we would make 100 percent use
10 of the water that's available for our facility,
11 there's going to be additional water that's
12 available that they will be using within their
13 district for other applications. And we think it
14 would be most unfortunate if at this point in time
15 the Commission were to impose a requirement upon
16 them not just for EAEC, but for all of their
17 customers, that would impose premature terms and
18 conditions.

19 And so for those reasons, we'd encourage
20 you to adopt the original recommendations, and we
21 thank you for your consideration of this issue.

22 CHAIRMAN KEESE: Thank you.

23 Okay, we'll hear from Mrs. Sarvey on
24 Water.

25 MS. SARAH SARVEY: Susan Sarvey. I've

1 been going to all of these hearings and the Tesla
2 workshops, and city of Tracy is providing recycled
3 water to Tesla, so that is not available to you.

4 In listening to all of these concerns,
5 I'm really concerned about, I can't figure out if
6 the Applicant is worried about Byron Bethany
7 getting the best price possible for their recycled
8 water, or if they're worried about them getting
9 the best price for their recycled water. But the
10 bottom line is the best thing for the environment,
11 which would be the best thing for all
12 Californians, is for them to use recycled water.

13 The cheapest recycled water for them to
14 use is Mountain House. Mountain House wants to
15 give them their recycled water. And even though
16 Calpine has not endeared themselves to my board of
17 supervisors, my board of supervisors has said they
18 are willing, for the good of their citizens, to
19 let them have that recycled water.

20 Now, my sister is a project manager for
21 Swinerton, my brother is a developer and a project
22 manager, and they have both told me the best time
23 to lay pipe is before everything's all built.
24 It's cheaper. You don't have to worry about going
25 through somebody else's lines, going through

1 buildings, all the little things that come up when
2 you allow development first. It seems to me the
3 most cost effective thing for Calpine is to
4 immediately enter into some kind of agreement for
5 Mountain House's recycled water.

6 And I have no sympathy for them. They
7 know that recycled water is the preferred cooling
8 method. And they've had all these hearings, all
9 this time to cut a deal with these people, and
10 instead they've really been behind the back door,
11 I think, going after raw water. And you and I
12 both know that in 2020, regardless of what any of
13 these men say, northern California is going to be
14 heptacrowded.

15 You can't believe how crowded my city
16 has become in the last 15 years. We're going to
17 need all that water to give it to the people that
18 are living here, because there's going to be
19 millions of us, and someone has to have water to
20 grow food for us to eat. We all want to eat, meat
21 eaters and vegetarians alike, and that requires
22 water.

23 So I submit you should definitely order
24 them to use recycled water, and if they're stupid
25 enough not to get it from Mountain House, let them

1 pay for the miles and miles of extra pipe for
2 getting it from someone else.

3 Thank you.

4 CHAIRMAN KEESE: Thank you.

5 I don't have any other cards on Water.
6 Do you have a comment on Water?

7 MS. AGUIRRE: Yes.

8 CHAIRMAN KEESE: Okay.

9 MS. AGUIRRE: Ena Aguirre, 937 West
10 Street.

11 I would like to start talking about the
12 water that we're talking about, by trying to get
13 you to visualize ten acrobats, okay. And I'm
14 going to name them for you. At this point, when
15 you talk about gray water and raw water, the ten
16 acrobats are over there somewhere, it is the city
17 of Tracy, which has commitments to use what I have
18 always called brown water, okay, in at least three
19 projects.

20 Our second, you know, acrobat up there
21 happens to be our County Board of Supervisors.
22 The third one is Mountain House. What Mountain
23 House owns is their wholly owned group for BBID.
24 Okay. They bought the stuff, they put their board
25 of directors and everything, when they had to do

1 certain things. Okay.

2 Then we have Gateway. Gateway is the
3 project that the city of Tracy, this is another
4 acrobat up there, right, that the City of Tracy
5 has stated publicly, I don't know whether they
6 passed the motion or not, that they will be using
7 brown water in their, in their, what is it that
8 they're going to have, a golf course. Okay.

9 Now, Gateway is a project -- going to
10 have a golf course where they're planning to hold,
11 to use brown water. I don't know, five to ten
12 thousand homes, whatever. They're saying that
13 they're going to have 25,000 jobs, they're going
14 to have a hotel. So there's going to, you know,
15 some of that brown water is going to be going
16 there.

17 Another acrobat that you have in there
18 is something called a sports complex. I went to a
19 meeting last week on the proposed Tracy complex.
20 They want to use brown water. Then, as I've
21 already talked about, BBID being a wholly owned,
22 you know, subsidiary of TriMark.

23 Then we have the Energy Commission is
24 one of the acrobats up there, you know, trying to
25 figure out well, who's going to be the one that

1 falls first, who, you know, who's the one that's
2 going to be doing whatever.

3 Besides that, we have the power plant
4 people, right? They're one of the acrobats up
5 there, trying, you know, trying to be sure that
6 those of us in Tracy -- and, by the way, when I
7 talk about all the acrobats up there, you know,
8 I'm also, I'm basically looking at it from a
9 resident of Tracy, that somebody is going to not
10 be able to use brown water.

11 Oh, and I forgot. Tesla also wants to
12 use brown water.

13 So all of these ten acrobats are up
14 there. One of the acrobats in here doesn't want
15 to commit it, you know, commit it in writing that
16 they are going to use 100 percent of the water.
17 Because they probably know what some of us in
18 Tracy know, that water is one of the biggest
19 issues that we have in Tracy, simply because of
20 the growth.

21 The County Board of Supervisors is one
22 of the acrobats, because they have to be careful
23 that their project, which is Mountain House, you
24 know, is taken care of, and that nothing happens
25 to them.

1 So when you make a decision, think of
2 those ten acrobats up here, trying to do, and try
3 to do the right thing for the residents of Tracy.
4 And that is make sure that one of the acrobats
5 here, the power plant people, commit themselves to
6 using 100 percent of the brown water, and that,
7 you know, in that commitment they can put in
8 there, I mean, it doesn't have to be just one
9 place. They can say BBID, they can say Tracy
10 Hills, they can say the city, you know. So that,
11 because one of the things that they're trying to
12 use is that if you only tell them to only use
13 BBDI, then, you know, they're going to be in.

14 So I am supporting the line that the
15 staff is kind of trying to make, and that is that
16 they should be using brown water as much as
17 possible, but they have to commit themselves to it
18 because if you leave them without any commitment,
19 we in Tracy know that they're not going to do it.
20 That they don't care. It's the mighty dollar that
21 talks in business, and I think we all know that
22 here.

23 Thank you very much.

24 CHAIRMAN KEESE: Thank you for ending
25 this on a very positive note.

1 (Laughter.)

2 CHAIRMAN KEESE: Okay.

3 MS. AGUIRRE: Right. And don't forget
4 the acrobats, okay? They're all out there, there
5 are ten of them.

6 (Laughter.)

7 CHAIRMAN KEESE: I feel, I'm going to
8 feel much better about my drive home.

9 MR. GRINSMAN: I just wanted to confirm
10 about the acrobats, that I think that's the CSD,
11 which is a wholly owned subsidiary of TriMark.
12 TriMark's just a minority, they're just a minority
13 owner of BBID.

14 (Laughter.)

15 CHAIRMAN KEESE: Thank you. That closes
16 the issue of Water.

17 Mike, did you suggest there was another
18 issue we had to take --

19 (Parties speaking simultaneously.)

20 CHAIRMAN KEESE: Bob. You wanted to
21 talk about visual?

22 MR. SARVEY: Are we going to read any
23 statements at the end or anything? Because I can
24 just read my statement at the end, cover all the
25 issues, so we don't have to argue for hours and

1 keep everybody here.

2 CHAIRMAN KEESE: You have a closing
3 statement. I think that's fine.

4 MR. SARVEY: Then we don't need to go
5 into much other --

6 CHAIRMAN KEESE: Okay. All right. Why
7 don't we have your closing statement.

8 MR. SARVEY: We're not going to give Mr.
9 Wheatland an opportunity first?

10 CHAIRMAN KEESE: Pardon?

11 MS. DeCARLO: On Visual?

12 MR. SARVEY: On anything. This isn't on
13 Visual, this is the whole proceeding.

14 CHAIRMAN KEESE: Well, I've already,
15 we've already distinguished -- Applicant doesn't
16 have anything on, he is ready to rest on Visual
17 the way it's been submitted. Staff is ready to
18 rest on Visual the way it's submitted.

19 MR. SARVEY: Okay. Well, this is the
20 entire proceeding that hasn't been covered, that's
21 all.

22 CHAIRMAN KEESE: Okay. Just --

23 MR. WHEATLAND: Well, can I just -- I
24 think it's great to have a closing statement. We,
25 though, have not restated in the record our

1 written submission, so if Mr. Sarvey has something
2 in addition to his written submission, I think
3 that would be the appropriate closing statement.
4 You're not going to read what your, your filing.

5 MR. SARVEY: Oh, no, no, no, no. This
6 is just something I spent all day on yesterday,
7 and it kind of got ruined with the --

8 MS. DeCARLO: Just a point of procedure
9 before we go. Do you want staff to submit written
10 comments with regards to the Applicant's changes
11 to the other conditions?

12 CHAIRMAN KEESE: Well, as long as you've
13 brought it up, before we hear -- let's do it right
14 now. The question is, where do we go from here.

15 It's the Committee's feeling at this
16 point that we are going to have to revise Air and
17 Water, and re-publish. That we cannot, that it's
18 going to be a wholesale revision and we cannot do
19 it through the errata fashion.

20 As I understand it, then we would have
21 to publish and that gives people 15 days to
22 comment again. I don't see any alternative to
23 that. If anybody does, tell us. But we really
24 think we're going to have to do that.

25 MS. SUSAN SARVEY: Could you please come

1 back and let us discuss the new revised whatever
2 you do? Because there's so many of us here from
3 this area that would like to comment.

4 CHAIRMAN KEESE: I hear your --

5 MS. DeCARLO: I just have one minor
6 point. I'm going on vacation on March 20th.
7 Would, by any chance, we --

8 CHAIRMAN KEESE: On my birthday --

9 MS. DeCARLO: Oh, is that your birthday?

10 CHAIRMAN KEESE: -- March 28th?

11 MS. DeCARLO: The 20th.

12 CHAIRMAN KEESE: Oh, 20th.

13 MS. DeCARLO: I would hope that we'd be
14 able to at least see the revision before then, so
15 that I can participate. But I understand if
16 that's too soon.

17 CHAIRMAN KEESE: Oh, you will definitely
18 see the revision before then. You will definitely
19 see that.

20 Major's done with San Joaquin evidence
21 now, and --

22 (Laughter.)

23 CHAIRMAN KEESE: We're going to start on
24 this one right away.

25 So, yeah, we will start at -- believe it

1 or not I've read the whole thing and edited last
2 night, so we're, we've got a start.

3 MS. DeCARLO: Now, with regard to the --
4 okay, I'm sorry.

5 CHAIRMAN KEESE: But let me, let's
6 start. Applicant, we will do it as, go as fast as
7 we can.

8 MR. WHEATLAND: We appreciate your
9 efforts, and we have no difficulty with the
10 schedule you're proposing.

11 MS. DeCARLO: That's fine with staff.

12 CHAIRMAN KEESE: Okay.

13 MR. BOYD: The only problem, it seems
14 like you're limiting it to the disputed issues of
15 Air and --

16 CHAIRMAN KEESE: No. No, I'm sorry.
17 What I was saying is we're going to have
18 rewrite --

19 MR. BOYD: The Air and Water sections.

20 CHAIRMAN KEESE: -- the Air and the
21 Water. We will edit the rest of the, based on our
22 conversations. So there will be some edits, but
23 what I was saying here, the reason that we're
24 going to have to re-publish is because we're going
25 to have to totally rewrite two sections.

1 MR. BOYD: Right. But the concern, once
2 again, is to the degree that it has an effect on
3 Biological Resources, any revisions that you made
4 in the Air Section we would want you to also
5 address that, as well, and there be a revised
6 PMPD.

7 And also, we didn't, we understand, and
8 tell us if we're wrong, that there is still an
9 issue with the Visual over, that's also considered
10 one of the four significantly impacted areas.

11 CHAIRMAN KEESE: Visual was, but the
12 Committee has issued its opinion on that --

13 MR. BOYD: So that issue is resolved.

14 CHAIRMAN KEESE: -- and the Applicant is
15 okay with it, and staff has evidently accepted it.

16 MS. DeCARLO: Correct.

17 CHAIRMAN KEESE: It's a bitter pill.

18 (Laughter.)

19 MR. BOYD: Okay. So that's no longer a
20 disputed issue between the staff and the
21 Applicant.

22 CHAIRMAN KEESE: Between those two.
23 Correct.

24 MR. BOYD: Okay. And so the staff won't
25 be, there won't be any additional -- I mean, as it

1 stood before, it was still, it wasn't -- it was
2 unmitigated.

3 CHAIRMAN KEESE: If we get anything in
4 after this hearing, obviously we'll take it. But
5 -- but you've heard what staff said.

6 MR. BOYD: Okay. So as it stands right
7 now what we'll be looking at basically is changes
8 in the Air section, and the Water section --

9 CHAIRMAN KEESE: The Water. We're going
10 to get something from the parties on Transmission.

11 MR. BOYD: And do you agree that to the
12 degree that it would affect it, you would
13 incorporate any changes to Biological Resources?

14 CHAIRMAN KEESE: Yes, we will.

15 MR. BOYD: Okay. Thank you.

16 CHAIRMAN KEESE: Okay. In general
17 public comment, do you want to comment on
18 something else, or --

19 MR. SARVEY: Sure. I just want to
20 comment on a couple of issues.

21 CHAIRMAN KEESE: Okay. Go.

22 MR. SARVEY: Okay. I took a lot of this
23 out of the statements, so it doesn't go too long.

24 I intervened in this project over 14
25 months ago. The first meeting I attended was a

1 scheduling conference on January 3rd, 2002. At
2 the conference, staff was trying to convince the
3 Committee that a cumulative air quality analysis
4 needed to be performed to accurately identify the
5 health impacts of this project when combined with
6 other projects in the area.

7 I was surprised to see the Committee was
8 not supporting staff at this conference. Several
9 days later, the Committee issued a ruling, again
10 not supporting staff in its decision to compel the
11 Applicant to perform the study. Staff has
12 testified that 223 tons per year of criteria air
13 pollutants remain unmitigated, and without its
14 recommended air quality mitigation strategy there
15 will be a significant adverse impact under CEQA.

16 The PMPD, on page 137, states, based
17 upon the entire record we are not persuaded that
18 staff's analysis is faulty.

19 Inexplicably, the PMPD does not adopt
20 the staff's local air quality mitigation as a
21 condition of certification. The CEC defers to the
22 air districts, the non-CEQA agencies. Again, the
23 CEC staff was not supported.

24 The PMPD does not support staff's
25 recommendation that the ammonia slip be lowered to

1 five parts per million, which could reduce
2 expected ammonia emissions of 414 tons per year in
3 half.

4 Staff testified that the ammonia slip
5 will create significant unmitigated adverse
6 impacts under CEQA, and no emission reduction
7 credits will be provided for these emissions. Yet
8 the PMPD supplies no explanations for these
9 discrepancies between the evidence and the
10 decision, in relation to unmitigated impacts under
11 CEQA. They merely defer to the air districts.
12 The PMPD implies that unmitigated impacts under
13 CEQA can be deferred to another agency.

14 In Visual Resources, staff has testified
15 that the facility will have significant
16 unmitigated visual impacts to visual resources
17 under CEQA. The PMPD ignores the staff's evidence
18 and chooses to rely on staff's deferral to Alameda
19 County's testimony that its visual LORS are not
20 broken. The last I checked, Alameda County's
21 visual LORS have not been adopted as CEQA
22 guidelines.

23 You can refer to another agency for LORS
24 compliance. You cannot defer CEQA impacts to
25 other agencies that have no CEQA responsibilities.

1 BBID's response to the PMPD says it
2 best. The PMPD defers to every other agency even
3 over the objections of its staff in the decision
4 but BBID.

5 In Land Use, PMPD refers to -- defers to
6 Alameda County even though the staff disagrees
7 with their interpretation of Measure D.

8 In Visual Resources, the decision defers
9 to Alameda County's interpretation that its visual
10 LORS are not broken, even though the CEC staff
11 testified that the project has significant
12 unmitigated impact to visual resources.

13 In Biology, staff's witness testified
14 without staff's air quality mitigation there would
15 be potential impacts to biological resources.
16 Again, the PMPD does not support staff's testimony
17 and defers significant impacts under CEQA to
18 another agency.

19 The PMPD also ignores impacts to the
20 Mountain House Community. It adopts the premise
21 that since Mountain House has no current
22 residents, that impacts to the community need not
23 be analyzed.

24 The visual impacts from the facility,
25 the air quality impacts, the fire protection and

1 hazardous materials risk are ignored. The very
2 residents that will be impacted the most are not
3 considered in the environmental evaluation or the
4 PMPD.

5 Only in the area of water resources is
6 the Mountain House Community considered. They
7 expect that this community will supply them with
8 recycled water even if they don't exist.

9 In summary, I want to thank the staff
10 for its expert CEQA analysis. Only in the areas
11 of worker safety and fire protection did they fail
12 to do their job. The land use analysis was
13 thorough, but the CEC's doctrine of deferral kept
14 them from asserting the correct interpretation of
15 LORS.

16 In their defense, they did do a better
17 job than they did in the Tracy Peaker case, where
18 they deferred to San Joaquin County's
19 interpretation of their LORS as being satisfied,
20 when San Joaquin County testified in the hearing
21 that their LORS had not been satisfied.

22 Unfortunately, the worker safety and
23 fire protection and the hazardous materials
24 analysis continues to burden the Tracy Fire
25 Department and our community without mitigation.

1 Every time I look at my PG&E bill I'll
2 see the energy surge, and I'll think of -- the
3 energy surcharge, and I will think of Calpine.
4 They took advantage of a bad situation and they
5 own 25 percent of the long-term contracts that the
6 governor deems exorbitant. Everyone in this room
7 can look forward to subsidizing Calpine's East
8 Altamont Energy contract on their PG&E bill for
9 years to come.

10 The Applicant was very resourceful by
11 using large campaign contributions, and who knows
12 what other kind of contributions, to buy off all
13 state officials. The officials they couldn't buy,
14 they brought in the FBI to indict them. Another
15 brilliant move. With this kind of strategy, who
16 needs evidence.

17 I'd like to thank Major Williams, who I
18 feel did a great job under the circumstances.
19 Like the rest of the legal parties to this
20 proceeding, I agree the PMPD should be rewritten.
21 I would respectfully suggest that the Committee
22 remember it cannot defer significant unmitigated
23 impacts under CEQA to another jurisdiction.

24 Thank you.

25 CHAIRMAN KEESE: Thank you.

1 Mr. Boyd.

2 MR. BOYD: I guess that was his closing
3 statement. I'd like to give mine.

4 CHAIRMAN KEESE: Well, you know, this is
5 actually a workshop. We don't really have closing
6 statements, but I defer. If you have, if you want
7 to make a brief statement, you're welcome to.

8 MR. BOYD: It's very, it'll be brief.
9 It'll be less than two minutes, I'm sure.

10 CHAIRMAN KEESE: Okay. Let's go, two
11 minutes.

12 MR. BOYD: Okay. Basically, what I was
13 going to contact first about is the, these are
14 issues that you really didn't discuss but were a
15 part of your PMPD.

16 CHAIRMAN KEESE: What were the -- the
17 nature of this meeting is to discuss
18 discrepancies --

19 MR. BOYD: Right. I understand. And
20 that's --

21 CHAIRMAN KEESE: -- in our report.

22 MR. BOYD: -- what I'm going to discuss.
23 You'll see.

24 CHAIRMAN KEESE: Okay.

25 MR. BOYD: What it is, is basically you

1 have written a rather extensive explanation for
2 why the Department of Water Resource contract for
3 this project doesn't pre-commit the Commission for
4 approval of the project.

5 And our position is clearly the
6 contract's execution committed both the CEC, as a
7 state agency -- committed both the CEC as a state
8 agency to a definitive course of action, pre-
9 committing the approval of the project before
10 completion of the required environmental review.

11 The project's approval and pre-
12 commitments must be set aside in order to allow
13 meaningful NEPA review, NEPA, National
14 Environmental Policy Act review, of the project's
15 alternatives. Because the Department of Water
16 Resources long-term contract is between the
17 Applicant and the State of California, WAPA, the
18 Western Area Power Administration, alone is in the
19 position to, quote, independently evaluate the
20 information submitted, and be responsible for its
21 accuracy, quote, pursuant to the Section 40 of the
22 Code of Federal Regulations, 1506.5A.

23 And also, the PMPD failed to make
24 prerequisite findings that must be made and
25 adopted by the CEC regarding significant adverse

1 impacts under CEQA on water resources, biological
2 resources, air quality and visual resources. The
3 PMPD required findings be made regarding several
4 areas of potential significant environmental
5 impact. Findings required by CEQA are the
6 conclusions made regarding the significance of the
7 project in light of the impacts and mitigation
8 measures that have been identified. They
9 establish the analytic link between the CEQA
10 document and the decision derived from the
11 document.

12 CEQA requires that a public agency, when
13 approving a project, make findings for each
14 significant environmental effect identified in the
15 EIR, as described in CEQA guidelines, Section
16 15091. The findings should have set forth the
17 underlying rationale used by the CEC, and also
18 WAPA, to approve or deny the project.
19 Specifically, the findings must explain whether
20 and why mitigation measures and project
21 alternatives have been accepted or rejected.

22 A statement of overriding consideration
23 was not provided in the PMPD that indicates that
24 even though a project would result in one or more
25 unavoidable adverse impacts, specific economic,

1 social, or other stated benefits are sufficient to
2 warrant project approval. The statement explains
3 the justification for proceeding with the project
4 despite the significant adverse environmental
5 impacts.

6 A statement of overriding consideration
7 provides specific reasons why the benefits of a
8 proposed project outweighs the adverse effects.
9 If the benefits of the project outweigh the
10 unavoidable adverse environmental effects, these
11 effects may be considered acceptable under CEQA
12 guidelines.

13 CHAIRMAN KEESE: Are --

14 MR. BOYD: I have one more paragraph,
15 and I'm done.

16 The findings cited above must clearly
17 state whether any significant impacts remain after
18 mitigation measures have been applied, or, as in
19 this case, why staff's recommended mitigation
20 package has not been adopted. They also must
21 provide the basis for making a statement of
22 overriding considerations based on evidence in the
23 record.

24 The CEC must make the findings,
25 including the statement of overriding

1 consideration, before approving or carrying out a
2 project for which a CEQA equivalent environmental
3 review has been completed.

4 Thank you.

5 CHAIRMAN KEESE: We don't intend to
6 override anything.

7 MR. BOYD: Thank you for clarifying
8 that.

9 CHAIRMAN KEESE: Ms. Donaldson.

10 MS. DONALDSON: Thank you. Terry
11 Donaldson, resident on Linden Road.

12 I would like to request that you have
13 another hearing like this in the 15 days that we
14 have to come back and discuss all this, and a
15 notification to the residents close to me.

16 HEARING OFFICER WILLIAMS: It's not 15
17 days that we're going to have something to you,
18 but when we do get a revised PMPD, then there is a
19 15 day comment period after the revised PMPD is
20 published. So the 15 days start to run when the
21 new document is published.

22 I just want to clarify that it's not --

23 MS. DONALDSON: Okay. Thank you, I
24 appreciate that. What type of timeframe are we
25 talking about?

1 HEARING OFFICER WILLIAMS: Before, I
2 think before March 20th.

3 (Laughter.)

4 CHAIRMAN KEESE: Maybe March 19, or
5 something.

6 We're going to go, you know, one of the
7 reasons that we rushed to get this document out,
8 and that's one of the reasons that we're going to
9 have to rewrite it now. We're going to do our
10 best to have it right the next time. We've
11 appreciated, as I said, I'll make my final
12 statement.

13 We've appreciated the comments from all
14 the parties that have enlightened us and
15 straightened us out. So we hope to have a good
16 product as soon as we can have it, and at that
17 point you'll have 15 days. At that point, we'll
18 tell you what our schedule is.

19 Commissioner Pernell is not here. You
20 know, there are some things that we just can't --
21 he's on vacation.

22 MS. DONALDSON: Will you only be
23 notifying the people that have signed in, or will
24 you be going out to the --

25 CHAIRMAN KEESE: You talk to Roberta

1 there, and you get notice.

2 Okay. Thank you. I believe that's the
3 end of comments on this. Appreciate everybody
4 being here. Back to work.

5 (Thereupon, the Committee Conference
6 was concluded at 2:17 p.m.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Conference, nor in any way interested in the outcome of said Conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of March, 2003.

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